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VOLUME 6

IN THE SUPERIOR COURT,

State of California, County of Sacramento.

OCTOBER SESSION, 1881.

HON. JACKSON TEMPLE, - - - - - - PRESIDING JUDGE.

WINFIELD J. DAVIS, OFFICIAL REPORTER.

SAMUEL OSBOURNE AND WILLIAM M. CUTTER, REPORTERS.

The People of the State of California, *vs.* The Gold Run Ditch and Mining Co.

COUNSEL:

For Plaintiff,

HON. A. L. HART, Attorney General, GEORGE CADWALADER, ISAAC S. BELCHER, A. L. RHODES, RICHARD BAYNE.

For Defendant,

J. K. BYRNE, W. C. BELCHER, S. M. WILSON, W. T. WALLACE, A. B. DIBBLE, A. P. CATLIN.

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In the Superior Court of the State of California in and for the County of Sacramento

The People of the State of California
vs.
The Gold Run Ditch and Mining Company

Afternoon Session
Tuesday
November 22nd/81

Transcript of Testimony
Volume

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Winfield J. Davis
Official Reporter

Testimony of Peter Spencer

Afternoon Session

Direct Examination

Mr Hart Where do you live Mr Spencer
A I live between B & C Street & 22 and 23 Street
Q In Sacramento City
A Yes sir
Q When did you come to Sacramento County
A. I came to Sacramento with my family in 1853. in fall of 53
Q Where did you settle when you came to Sacramento
A I stopped in town, near about two years, then I located on D North, near the American river
Q Where is D North
A It is right down on 20th street. near 20th Street between 19th & 20th. D North. from the old levee. from
1706 A. B. C. from the A Street

Levee,
Q Where did you live in 1855.
A. I lived down there. that fall
Q where
A. On D north, there was a man by the name of Robert Mc had a garden down there. and I worked there some for him, and he purposed that he would sell out to me
Q. Where was that D north was it a street or a tract of land or a lot
A. I had about six acres. it was used as a garden
Q. Where was it located with refference to the north levee of the city
A Right down 20th street. between 19th and 20th near 20th, near the American river.
Q. where was this located with reference to the north levee? with reference to the

1707

North levee? on the north side of the north? levee or where was it.
A. Right down on 20th street, going north. by the north line of Lisles bridge. on 20th street
Q Where was it with reference to the north levee of the city? which side?
A. On the north side.
Q. Between the levee and the city
A. Yes sir
Q. How far is it from the banks of the american river? how far was it
A It was ~~one~~ block
Q. From the bank of the River. E. street came right up to the river
Q. On which side of the river
A. The south side
Q. Between the levee and the river.
A Yes sir
1708 Q. Did you have occasion

To see the american river in 1853, near the city of Sacramento
A Well, when I was coming in I had occasion to see it at Pattersons. up at Pattersons station
Q. How far was that above the city
A I suppose it is about ten miles
Q. Did you at that time observe the character of the water and the bed of the stream.
A. Yes sir, I noticed it. I went there and looked at it
Q. What was the character of the water?
A. It was very clear, what took my notice more was that there were a great many fish on a side stream or place. they ran into the big stream. Says I to my self; this Country
1709 is full of fish. that was

One time when I took particular notice, that is, to notice so clear, and gravely bottom and so many fish
Q. When was that?
A In the fall of 1853
Q. How deep was the water at that time?
A. The water was not so very deep, the fish was on a side, and they ran up into the deep water
Q. Did you ford the stream
A. No sir, I came down to Sacramento on that road
Q. On the north side?
A. No sir. on the south side
Q. The south side of the river A. Yes sir.
Q. Could you estimate how deep the water was at that time at or near pattersons
A. It was not very deep only in some places. in holes. I suppose I could have walked across it. I dont suppose it was over two
1710 or three feet deep then

Q. What was the character of the gravel or the bottom of the stream

A. Nice gravelly bottom, from the size of a marble up to five or six pounds, very likely. And there were rocks in it

Q. What kind of banks did the stream have

A. The banks were a good deal steep, there was a road went down to where the people brought there horses down to water. that made me go down to look at it

Q. Were the banks steep?

A. The road was made down to the river

Q. How were the banks? No matter about the road down to the river?

A. The banks were pretty high

Q. Were they steep

A. They called them steep, where I went down, but not where the road was.

Q. It was not steep in the road of course?

1711

A. That was graded down
to the river

Q. I am not asking about
the grade of the road? I am
asking about the banks where
there was no grade of a road

A. It was a great deal
steeper in some places

Q. Did you notice whether the
banks were high or not?

A. They were middling high
on the river

Q. You dont know how high

A. No sir.

Q. You say that you then
Came to Sacramento?

A. Yes sir

Q. With the intention of settling
on this D. North

A Yes sir

Q. That is what you Call it?

A. Yes sir, and that man
that I bought out had a
small house there, and he
used to raise mellons there

Q. After you Came down there
in 1853, you noticed the
1712 Character of the American

river in Sacramento? did you.

A. I Recollected when I saw it, its Character was a Kind of blue looking water, it didnt look muddy at all

Q. What was the Character of the bottom of the stream here at Sacramento? the bed of the stream,

A. I didnt notice particularly

Q. Did you notice how steep those banks were

A. I did not notice particularly

Q. About how deep were those banks? did you notice that.

A. Well, it might have been from ten to fifteen feet I did not take particular notice

Q. You did not take particular notice, and dont Know about that

A. No sir, I seen that there were some sycamore trees growing along the banks at Sacramento; right at Sacramento

1713

Q. Were there any trees growing along the stream by the side of the road you came down in 1853

A. There were brush and trees and everything

Q. What did you do with this tract of land between the Sacramento river and the levee

A. I worked at it in gardening and raising vegetables

Q. What was the character of the land? did you succeed in raising any vegetables

A Yes sir.

Q. What was the character of the soil

A. It was splendid, it could not be any better

Q. What do you say as to the nature of the soil

A. It was a sandy, loamey soil

Q. Was the sand anything like this (showing)? (I show the witness the sand contained in bottle marked W Hodgkin)

1714 A. No sir, it was fine, loamey

Soil. darker than that. That is regular coarse sand, I call it.

Q. Not like that?

A. No sir, not at all

Q. Anything like the sand in this other bottle, marked number 4, A.S.G?

A. Nothing like that. it was darker

Q. Anything like the soil contained in the bottle, marked number 2 A.S.G

A. Yes sir. that is more like it

Q. How long did you continue working that garden

A. Well, I worked it until 1851 or 52,

Q. How is that? You mean sixty one?

A. Until sixty one and sixty two.

Q. What was the character of the vegetables you raised there

A. Watermellons, Cantelopes, Sweet potatoes, Irish potatoes, Cabbages, lettice, and raddishes

1715 Q. All kinds of vegetables

A. Yes sir
Q. Did you have any fruit trees there
A. I planted some apple trees and pear trees
Q. Did they grow
A. I just planted them for my own use. and peach trees
Q. Did they all grow
A. They were about twenty in all
Q. Did they all grow and thrive
A. They all did splendid, they could not be any better
Q. Did you have a dwelling house there A. Yes sir.
Q. Did you live in it
A. Yes sir
Q How long did you continue to live there
A. From the winter of 1853 down to 1862
Q. What made you leave in 1862
A. I left there in one night. the water came into the house a little. I went back to the house the next day and went over to Mr . I took some
1716 bed clothes and went over to Mr

. I thought that the was going to perhaps come up too high. I dont know that it had overflowed very much then

Q. Did you have any flood of water up there, up to that time

A. No Sir,

Q. You had no flood in your house up to 1862

A. No sir

Q. None at all

A. No Sir

Q. How deep did the water get in your house in 1862

A. Well, it might be about three or four inches

Q. Did you notice any difference in the character afterwards in the bed of the stream? the bed of the American river? After the flood of 1862?

A. I noticed that it was washed out at 20th street a great deal

Q. How much did it fill up

A. I didnt notice much particular difference in that. only there appeared

1717

to be on the banks more mud
and sand
Q. Any in the stream
A. On the banks of the American
river
Q. Any in the bed of the stream
A. I could not say I noticed
the people used to ford it
a great deal. they would go
down to 20th street and ford it
Q. Did it leave anything on
the land that it flooded
A. It did leave some sediment.
but it was a good quality. I
didnt grow anything there
at first. that is, in the
Summer of 1853
A. I am speaking of 1862, or
1863 I did not try to raise
anything in 1863. I did not
think it would raise anything
but I noticed the willows grow
up a good deal there. so when
it got dry afterwards, the next
Summer, I took my hoe and
planted some mellons, I wanted
to see if anything would grow
1718 there of that kind. I say I

noticed the willows grew there,
— started to grow there. and
I thought if the willows would
grow there that something else
would grow there. and it started
to grow splendidly, and then
I found that some of them
stood like they didnt know
whether to grow any more or not.
others grew right along
Q. How much deposit was left
on your land— how deep was
it — in 1862
A. Well, the deposit in some
places might have been a foot,
or more. in some places it
was six inches. I know that
when I went to plow. I could
plow the old dirt up well
enough.
Q. How did you remain
there after 1863
A. I remained there up to
1867 — 68
Q. Did you have any flood
that year
A. Yes
1719 Q. What did that flood do?

A. It washed away my house
Q. Washed away your house?
A. Yes sir.
Q. Did you notice in the mean time whether the bed of the river had filled up any.
A. I didn't notice the river much
Q. It washed away your house?
A. Yes sir.
Q. Did it leave anything else there? any deposit
A. It left two to four or five feet of sand
Q. What kind of sand did it leave A. Coarse sand
Q. Something like that contained in the bottle which I first showed you? marked Hodgkind
A. Yes sir
Q. Coarse sand like that?
A. Yes sir
Q. How many feet do you say it left
A. Two to five feet. From two to four feet, and in some places perhaps five feet
1720 Q. Of sand

A. Yes sir
Q. Did you ever afterwards Cultivate that land
A. I tried three years in succession, and I could not get anything to grow. it Would grow up to about as high as that (showing), and then it would kind of dry up and die away, I could not touch the old soil
Q. After 1868, did you go to look at the river to see whether there was any of this sand in there
A. After it went down, I did Not take much notice of it
Q. Did you ever live in that old ~~pla~~ ~~lot~~ house or on that old lot afterwards
A. No sir
Q Why not
A Because I thought it was of no use
Q. Could you have lived there
A. I could not. my house was washed out, my house was washed away. And Mr Cogswells

house was washed away and
Mr was washed away
And there was a man by the
name of Miller who had a
house down there it was
down at street, his
house was washed down to
the head of Chinese Slough.
Mr Reynolds barn was washed
away.

Q. This was in 1867-8

A. Yes sir, and there was a
old man who lived on the
bank of the river - he had
a little place there - by the
name of , his place
was washed away, and he was
taken out of a tree the next
morning.

Q. Did you ever experience
any difficulty in living on that
land between 1853 and 1863?
during winter times

A. No sir. Not particularly.
After 1862 -

Q (Interrupting) before 1862 and
after 1855

1722 A. No sir. I had no

difficulty until 1862

Q. Do you know whether or not anybody could live there now during any ordinary season

A. I lived there from 1853 —

Question [Interrupting]. I mean now? since 1867-68? Could anybody live there? Could a house stand there in the winter time

A. Mr   had a house on B street some times people lived in it

Q How deep does the water get there now in the winter time

A. I suppose it gets from two to five feet. at least five feet. it was last winter.

Q. During ordinary seasons of high water, how high does the water get there,

A. Sometimes two or three feet. And so on. I notice lately that it runs over that land. of late years it is very high

Q. Do you know why it is that the water runs over there now every year, when it did not

1723

Do so formerly

A. I could not say what the reason is except that the river is filling up

Q The river is filling up

A. Yes sir

Q. You know that

A. Yes sir. Yes sir. I am sure of it

Q. What is it filling up with

A With sediment and sand and everything, and it is getting worse every year in places

Q. How long have you noticed that. A. for several years I have noticed it, and last winter I measured how much sediment it left in the old bed of the American River

Q. How much did it leave

A. It left eighteen inches

Q. It left that last winter

A. Yes sir

Q. There was 18 more inches of deposit in the spring than there was in the fall

1724 A. There was eighteen more inches

of sediment than there had been last year at this same time

Q. That is in the river

A. Yes sir

Q. That is in the bed of the old river A. Yes sir.

Q Do you know whether there has been a deposit of any more sand on the land where you live.

A. Mr Boquet has told me that it is filling up all the time, he has told me five or six times when I saw him in the city — Q

Q (Interupting) Never mind about anything that he said. That is not evidence.

A. Well he is hauling sand all the time when he can go there with his teams. I know that

Q. At the time when you were on that place, engaged in gardening, between 1853 and 1862, did you have any

1725 levee around your place

A. In the winter of 1867 Mr Cogswell said — says he — ~~and~~ ~~come~~ } "we ought to make a levee along there".
Q. I am talking to you about the time between 1855 and 1862? did you have any levee around that place A No sir.
Q. There was no levee there
A Only when I first went to live there there was one on the bank of the river
Q How big was that
A. I dont think it was more than two or three feet high
Q And that kept the water out during high water
A. Yes sir
Q. That kept the high water out until 1862
A yes sir
Q. How high would a levee have to be now to keep the water out there
A. I dont know
Q. Do you know whether a levee ten feet high would keep
1726 it out

A. I think it would wash down
Q Why
A. Because the current runs so
Swift when the flood starts to
Come up there
Q. How deep from the banks of the
river is the water there now?
how high is the bed there
A. It is level with the land
on 20th street
Q That is, the bed of the river
is level with the land
A. Yes sir. down there on 20th
Street it is

1727

Cross Examination
of
Peter Spencer

Mr Catlin "Mr Spencer; you remember where the old levee was around the city, before the big flood of 1862

A Yes sir

Q Were you inside or outside of that levee

A I was near the river; outside, I suppose you would call it

Q Did that levee take your lands in or leave them out

A It left them out

Q Where was this levee built that you speak of? the levee that was there when you first came there

A It was a small levee made along the river they used to call it Vine and American

Q Did that levee run on along, so as to protect the city, in 1855 – 6

A. I dont know the year when that levee was made. I know that there were men and teams

1728 there making a levee when I

First come to the country, in 1853

Q They were building a levee around the city then

A Yes sir they were at work down at A Street

Q Where did that levee run? On what street did that levee go? On the bank of the American river?

A. I think it went east and west. I think it did

Q. On what street

A. On A street it went one street north of where it now comes

Q Well, one street farther north than where it now is

A Yes sir

Q That is where the old levee was

A Yes sir

Q And your land was between that levee and another and smaller levee upon the immediate bank of the river

A Yes Sir

Q That small levee protected your land from overflow?

1729

That is the only levee that protected your land from overflow
A Yes sir. I suppose it did
Q. Look at that sand there (Showing) { how would that compare with the sand that came on your land in the fall of 1862
A It was darker than this and not so sandy
Q Did you know of any sand like that around there
A There is some on the sand bar now
Q What sand bar
A Down on 20th street
Q Sand on the sand bar at 20th street, like that? Similar to that?
A Yes sir
Mr Hart where did you get that sand
Mr Catlin Another person and myself selected that on Sunday (here followed a conversation between the attorneys)
Mr Catlin This land that you settled on was a part of the city at that time?

1730

A What is that

Q This land that you settled on, in 1853 was marked on the City map, by blocks and streets, was it not

A Yes sir

Q Who Claimed to be the owner Of that land when you settled there

A Well, the man I got it from pretended to have a claim on it, and he pretended to have the tax title, and then there was some other claim to it, there was a claim from somebody else,

Q He Claimed the Sutter title

A Yes sir, I bought the Sutter title. And then there was another piece where—

Q (Interrupting) You see that map there on the wall? Can you tell me where your land was by that map

A. Well, I might (Examining)

Q Stand with your back the other way so as to face the Judge, and put your finger on about where the

1731

land was or is?

A Is this the levee here? (Examining) that is the levee, is it? where is the river (Examining) this is the railway is it not

Q There is no railway there, but that makes no difference? it was along some where you have got your finger now, was it not

A Somewhere about here (pointing)

Q You stated that you lived between B and C street and twenty second and twenty third Streets

A Yes sir

Q That is, inside of that line

A Yes sir

Q You have lived there ever since you moved away from your old place, in 1867

A Yes sir

Q When was the big north levee built

A Well, it was built the year after the flood I think. I think it was in 63 or 4

Q That is the levee where the

1732

railway runs

A That is the one (pointing) that is where the railway runs. I think they started on it in that year

Q At what time in the year in 1853 did you come here

A. I came here in the fall, I came to the country across the plains

Q When you went and settled on that land, didn't you notice that there was a row of levees there

A. Yes sir, there was a levee there

Q On both sides of you? on both sides of your land

A There was a very small levee along the river

Q And a pretty good sized one on the South

A They were making that work there, on that, when I got here When I came here I saw them working on that levee

Q That was when you first came to the country

A Yes sir

Q You dont Know anything more about it

A No Sir

Testimony of John Rooney sworn

Direct examination

Mr Hart — Where do you live?

A— I live in Brighton

Q— How far is that from Sacramento?

A— Five miles

Q— Five miles on a direct line A— Yes Sir

Q— How far do you reside from the banks of the American river? From the banks of the American river?

A— I lived on the American river. My house is not on the river, But I own land on the river

Q— Your land extends to the bank of the river

A— Yes Sir

Q— How far is that from the mouth of the American river

A— Well I guess it is six or seven miles by the bends of the river

Q— When did you settle there

A- I settled there in October 1850

Q- Have you been residing there continuously ever since?

A- Yes Sir. I have been living there since

Q- What has been your occupation A- Farming

Q- Farming ever since 1850?

A- Pretty much ever since I had to leave the American river in 1862, Then I went outside to do work. I had been farming there, but the flood came and destroyed the crop, after I commenced living on that river

Q- How far up the American river are you acquainted with its channel?

A- What is that?

Q- How far up the American river are you acquainted with its channel?

A- I am acquainted with the channel of the American river as far up as Folsom

1736 Q- How long have you

been acquainted with the channel of the American river that far up?

A- I have been acquainted with it since April 1850

Q- What was the character of the channel of the river in 1850, when you came here?

A- The American river was clear. And it was a kind of a gravelly bottom. There was a gravelly bottom out.

Q- What was the character of the banks?

A- The banks was steep, bluff banks

Q- How far up did that steep bluff banks extend?

A- Well there were banks all the way up from Folsom. All the way down to the mouth of the American river. The banks all the way down were steep. There was a crossing place at Steven's about 9 or 10 miles from here, where the banks were

1737

not so steep. Not so very steep. There was a kind of a fold there.

Q- A fold A- Well it was made for a fold in 1850

Q- How high were the banks of the American river on the south side?

A- I think the banks must have been on an average from eighteen to twentyfive

Q- All the way up?

A- Up as far as ten miles: ten or twelve I didn't examine the banks, I think, more than twelve to 14 miles. I think the banks from the mouth of the American river from twelve to fourteen miles, would average eighteen to twentyfive feet

Q- How were they above that point if you know?

A- Well I think they were above (reflecting) I can not

be positive about it above that. I never examined it close enough to say

Q- There were pebbles in the bottom of the stream?

A- Yes Sir

Q- You could see them all the way up and down the stream? A- Yes Sir. It was a clear running stream. It was very clear water. Salmon used to go up the stream, you could see them on the bottom very plain

Q- How deep was the water there in the stream where you could see them?

A- In some places the water was 20 feet where you could see them

Q- You could see down 20 feet in the water, and you could see salmon?

A- Yes Sir

Q- When do you remember seeing salmon go up the river for the last time

1739

A- I saw salmon in the stream in 1861 and a few the last time. After the flood of 1861, '2, the river got very muddy. The river got muddy afterwards

Q- Have the salmon come up the river since that time?

A- I could not say. I have never seen any in the river since. I have never seen many salmon there since 1861. They may be in the river but you can't see them.

Q- What was the character of the land on the South side of the river? Adjoining you on the river? So far as you knew it

A- The land was black loamy soil.

Q- Was it higher or lower at the bank of the river than in the surrounding country? The country back of it?

1740 Q- Was it higher or lower

at the bank than the country back of it? The country farther away from the river?

A- Pretty much on a level. You would see an odd slough now and then, on the side. But it was generally level country from the bank out for a mile or a mile and a quarter

Q- And then the country grew higher or lower

A- It was higher

Q- What was the nature of the vegetation growing on the stream?

A- There was oak, and ash and wild grapevine. That grew on the banks in 1850, 51, and 52 and up to the fall of 1861 and '62. The banks were destroyed then a good deal

Q- As to these trees; were they close together so as to form a grove or forest or were they far apart?

1741 A- In some places they

were very close together and in some places there was a space between them. I know there was a great deal of wood on the bank of the river

Q- Was there any difference in this respect in the different localities, between here and Folsom? A- Yes Sir.

Q- What was it?

A- Sometimes the trees were not so close. Sometimes they would grow in bunches. At times, in some places, the trees were not so close, But take the American River from its mouth to the 10 mile house, it was pretty well timbered with oak and small ash. And grape-vines growing along among the oak

Q- What grew on the bank of the stream besides the trees? On the bank of the stream? That is, what grew wild without cultivation?

1762

What grew on the land besides the trees?
A- There was grass
Q- Were there any wild-flowers
A- Wild flowers! Oh yes sir. The whole country was covered with wild-flowers when I settled there first. The country was covered with wild flowers. The whole valley. All around the country, they were growing.
Q- Small or large oaks?
A- Some large and some small
Q- How near to the banks did they grow. A- They grew on the banks. And they grew away back in the valley. It was pretty heavily timbered when I settled there. Right about Brighton.
Q- When did people first commence to settle this land along there, and ~~settle~~ occupy

1743

it in small farms

A- The first farming done on the river, in Brighton, was done by Mr. Stevens. He commenced on a Christmas day to put in a crop of barley.

Q- When was the first farming done that you knew about in that section?

A- In 1851 I put in about 200 acres. I commenced in October 1851. A great many men commenced farming then, all along the valley. After that the country was settled up by small farmers in homestead tracts In 160 acres at a time. There was a grant claimed at the time, by Sutter; called the Sutter title. But the farmers put in their claims. They did not think that there was anything in the Sutter title And they set up for 160 acres

Q- They claimed it as Government land?

1744 A- Yes sir. And it turned

vent to be Government land

Q- How were these farms; close together or separate?

A- Close together. I fenced my 160 acres in — 160 acres of mine — in the Winter of 1851

Q- These farms were very close together A- Yes Sir

Q- Were there any spaces of land between these farms unoccupied A- They were very close together. Each man had 160 acres. We all sowed in 1851

Q- Were the farms contiguous or separate

A- What is that?

Q- Did the farms adjoin each other? A- Yes Sir.

Q- From that time on, what kind of product was generally raised on the south ~~side~~ bank of the stream, by these farmers whom you mentioned?

A- There was barley and wheat. That was generally the crop at that time.

1745

Barley and wheat. Some men put in a patch of watermelons. Some patches. Barley and wheat was the principal crop

Q: Were there any orchards there? A- We commenced putting out orchards in 1852

Q- Did you have any levees along the banks of the stream?

A- No Sir. There was no levee Q- Did you experience any difficulty in 1850 or 57 and up to 1860 in farming? During ordinary seasons there? Without levees?

A- What is that?

Q- Did you experience any difficulty after 1850? and up to 1860, in farming there without levees?

A- No Sir

Q- During ordinary seasons?

A- No Sir; no difficulty at all There was no difficulty in farming until the floods of 1861 and '2

1746

Q- Up to that time was there any difficulty in farming there. A- No Sir. I never saw any water over it Q- When did the water first come over these lands? A- In 1861. I think not until 1861'2, - the winter of 1861,'2. I think it was about Christmas 1861 when the water came up first. And then in January

Q- Do you remember the number of inches or rain that fell ~~there~~ in that year

A- I do not

Q- Now what was the effect of that flood of 1861-2 upon the bed of that stream? The American river channel

A- Well it commenced filling up right there. It commenced filling up there

Q- What with? A- With this sand and sediment And the banks commenced settling very much in 1861,'62. I had some house and barns, on

1747

the bank and they all went off in the fall of '61 and '62

Q- How much did the bed of the stream, opposite that place, fill up in 1861 and '62?

A- It filled up, - well I think it would average about three feet

Q- About three feet, in the bed of the stream?

A- I could not say exactly in the bed of the stream, But I know in some parts of my land it filled up about three feet.

Q- How high were the banks at your place at that time? From low water mark

A- 20 feet

Q- Twenty feet from low water mark

A- Yes Sir

Q- Do you know how deep the stream was?

A- I know that large steamers came up there in 1861 and '2

Q- What kind of steamers?

A- These kinds that used to run up on the river

1748

Q- How many trips did they make around there?

A- They ran there all winter. Sacramento was flooded at the time. The steamers ran up to Hoboken where they sold all the goods that went to the mines then. I used to haul goods from there myself and helped work a good deal around there ~~myself~~ in 1861 and '62

Q- At that time did the water run up above its natural banks

A- In 1861 and '62 ~~-~~ Yes Sir It overflowed the whole valley in 1861, '2

Q- Was the water much higher there than the natural banks of the stream? How much higher

A- I think in some places it was over four feet. From four to six feet.

Q- How long did the water remain that way?

A- About twenty four ~~feet~~ hours. Q- In 24 hours

how much did it fall

A- Most of it was gone except in low sags. There the water remained for some time. In kind of sloughs.

Q- Was there any deposit left on your land, by that flood of '61,'2.

A- I had in about 800 acres of grain in 1861,'2. It was all covered up. Destroyed.

Q- What was it covered with?

A- It was covered with sediment and with some sand

Q- What was the nature of this sediment

A- Well, it was a kind of [reflecting] with this sediment There was this surface slickens that came from the hills

Q- What was its color?

A- There was left this sand and red clay mixed

Q- Did any of it resemble the package marked here No 5 A. S. G.

1750

A- Yes Sir. It was mixed with that. There were leaves and sand and red clay mixed.

Q- What kind of leaves did you find there? A- I would say that there were oak and pine leaves

Q- Pine leaves A- Yes Sir.

Q- Mixed with this sediment? A- Yes Sir

Q- What was the character of the sand, which was left deposited there.

A- Well on some parts of my land, it left a white sand. In some places it left this sediment; down near the river bank, it left a white sand. On the back part of the land, it left a sediment

Q- Did it leave a good deal of that on the banks [showing] I refer to W. Hodgkins A- Yes Sir

1751 Q- It left a good deal of that where?

A- Near the stream of the American river. On the banks

Q- This is marked No 4, A.S.G.? A- It left some of that. Some of that and sediment mixed.

Q- When again did any flood come to that portion of the country?

A- I think the next flood came in 1868. I think it was in 1868

2c/

Q. When again did any flood come to that portion of the country?

A. I think the next flood came in 1868, I would not be positive but I think it was in 1868

Q. What effect did that flood have on the bed of the river? A That filled up pretty fast

Q. That filled up pretty fast — how much of the river did it fill up? how deep did it fill up in the channel?

A. Well, there are portions of my place that time that it filled up very near level with the bank

Q. It filled the river nearly level with the banks?

A You see the banks commenced caving in, and this sediment and sand came building right up afterward and the land is very near level with the banks

Q. How deep was the sand after that flood had subsided?

1753

A. Well, some parts of it, it left white sand on it and some on the front of the river there, it left all white sand pretty much on it

Q. How deep?

A. Well in some places it left three or four feet

Q. In the river - in the bed of the river?

A. No, but on the banks of the river

Q. I mean in the bed of the river. You say it filled it up nearly level with the bank?

A. It did fill it up level with the banks

Q. How deep was that sand in the channel where it filled it up?

A. Well, it must be all of fourteen, fifteen or twenty feet

Q. Fifteen or twenty feet?

A. Yes sir. I know places up there where it filled up right level with the bank and higher than the bank because

it went over the land two or three feet

Q. How far up and down the river did that filling occur?

A. It filled from the mouth to what is called Patterson mouth there

Q. From the mouth of Patterson ranch?

A. From the mouth of the river they call it the nine mile house, that was Patterson place at the time

Q. From the mouth of the river? A. Yes sir from the mouth of the river where the bank caved, this stuff came and filled it level with the bank

Q. All the way?

A. No sir, not all places, where it cut and caved this sand came and filled it right up and it is there now

Q. Do you know where the sand came from?

1755 A. Well, I think it must

have come from the mines

Q. Well, do you know whether it came from above or not?

A. From above - I am certain it came from above, It could not have come from below certainly

Q. It could not have come from below? A. No.

Q. How far up the river did you ever see this sand coming down?

A. ~~It~~ was up as far as twelve or fourteen miles there after the flood in 1868 and it was all covered with sand, certain portions for twelve or fourteen miles

Q. Did you ever notice it in the water as the water came down?

A. Yes sir certainly I noticed it in the water

Q. Did you ever make any test to see whether the sand was floating in the water?

A Yes sir I have seen it flowing in the water.

1756

Q. About how thick?

A. Well sir, it is pretty thick when it first came down

Q. How is that?

A. It is pretty thick. I first dipped a bucket of water in the river and left it to settle for twenty minutes and it would be about 1/4 to 1/2 an inch of sand in it. I often tried it that way

Q. What kind of sand is it that you found there?

A. It would be mixed with the white sand and some sediment all mixed up

Q. Slickens?

A. Yes sir, Slickens

Q. Did you ever notice farther up the river, say up as far as Folsom whether or not any sand was coming down the river?

A. I never was up there. I have been up that river too, but I never paid any attention to it much

1757 Q. In the first fourteen miles

up the river?

A. About fourteen miles up — Yes, sixteen or seventeen miles. I was up to the Farmers Diggings up there several times, about four miles from Folsom I guess, by the river

Q. Did you ever know of this sand washing out?

A. It moves

Q - How do you know?

A - Well, I have seen it

Q. You saw it move?

A Yes sir

Q. How? A. Well, supposing a freshet comes to day and there is a bank of sand in the river and it will shift and may shift some distance down, or may shift it out altogether

Q. How does it do that?

A. It does it with the action of the water

Q. Does it carry it in the water? A. Yes sir

Q. Or does it push it along?

A. It carries it along and as the river rises it carries

1758

it all off, it depends altogether on how the wind is blowing. Sometimes it blows it in on the land. If the wind is blowing on the north side of the river it blows it in on my land and if it is blowing on the south side it carries it on the other side and it keeps moving it

Q. Did you ever know of the river cleaning itself out of this sand and again filling up? did you ever know of this sand being cleaned out first and then fill up again? A Yes sir, I have seen it doing it several times

Q. Now state when it was?

A. I seen it doing it last year

Q. It did last year what time?

A. At the time of the flood

Q. Well, what part of the flood? A. Well, the flood that came there last year in January, I think it was

1759

Q. Where did it carry the sand to at that time?

A. Well, I could not say where it left it but it took it from the bank on the river at my place there and that bank was carried off from there.

Q. You do not know how far down? A. Fifteen or twenty rods. It went right down and there was a deep channel left right there, perhaps the water was from seven to eight feet. The spring freshets came again and filled that right up again.

Q. How often does the river do that? A. Oh, it does it at high water and the first water that comes down leaves a great deal of sediment opposite my place in the river — sand, and then the spring freshets come and wash it out again, a good portion of it some times. Now last year it did not wash

1760

much of it out. Opposite my place the inside of the levee where the sand is I think it is high as any portion of the ranch - any portion of my ranch

Q. Do you know what the fall of the river is along by your place, what fall the river has, the water?

A. I do not

Q Is it a slight or a great fall? A. Well, to commence up above it would be a great fall, but when the river is filled from the mouth right up as far as Farmers Diggings there I dont believe it has much of a fall

Q. You say it is filled from the mouth to Farmers Diggings?

A. Yes, it is filled up

Q. With sand?

A With sand, yes sir, sand and gravel and cobbles.

Q. What is the nature of the current running past your place in high water

1761

times, at times of high water and freshets?

A. The nature of the sand?

Q. No sir; the current? — do you know what a current is?

A. It has a very swift current.

Q. How swift?

A. When the water is high?

Q. How swift as compared with the current of the Sacramento river?

A. I have an idea that when the American commences rising first it is swifter than the Sacramento River

Q. Could you pull a boat up on it? A. Going down?

Q. No, going up?

A. If there was water enough in the river there would, but the river is filled up so that it would be hard for a boat to get up there

Q. I mean during the time of the freshets could you with a pair of oars pull

1762

a skiff up that stream

A. Well he would have to be a mighty good boatman to go up in it

Q. Have you noticed during the last ten years whether or not the amount of sand in the river is increasing or diminishing?

A. It is increasing mighty fast

Q. Increasing fast?

A. Very fast.

Q. Does it increase yearly or at periods shorter or longer than that? A. The sand last year commenced increasing from the first raise in the river — It is increasing all the time

Q. It is increasing all the time? A. Yes sir all the time

Q. Does sand come down in the summer time?

A. There dont come much sand when the river is low. There is only a little small

1763 stream running in what is

Called the Nisi Grant there in the summer.

Q. Do you notice any rocks coming down the stream in addition to this sand?

A. I do

Q. What kind of rocks?

A. Round rocks, cobbles.

Q. Any thing else?

A. I never saw anything only cobbles coming down

Q. What is the nature of the rocks?

A. Well, it is such as they pave the streets with — Cobble Stones.

Q. Did you ever see any quartz up your way?

A. I never noticed any

Q. Now during this time state whether or not any considerable portion of the country up there has been covered with this sand and if so how much?

A. It has been covered about a mile and a ~~half~~ quarter wide, I guess, the bottom

1764

is, a mile and a half may be. There was some sand left all over the bottom there.

Q. How long is the bottom. You say it is a mile and a half wide, how long is it?

A. The bottom is about nine or ten miles.

Q. Ten miles long and how wide? A. Well, in some places it is about a mile and in some places a mile and a half.

Q. Do I understand you to say that all of that country is covered with sand?

A. No. It is not covered with sand, but it left portions of sand in all that country.

Q. How deep is the sand in its deepest place there?

A. Well, I have got a place of 100 acres that was covered last year with sand.

Q. How deep?

A. Well, it was covered from six inches to three feet

1765

some places four feet

Q. Had it been covered any before that? A. Yes sir.

Q. How much had it been covered before that with sand, how deep?

A. In 1862 I had about forty acres of it that was covered with sand and in 1868 about forty acres

Q. How deep?

A. It was covered about from six inches to two feet

Q. Now how deep is the sand on your place now? this place that you speak of?

A. It is from a foot to as high as four I guess, from a foot to four I think

Q. Does it cover the entire piece of 100 acres?

A. Well, it pretty much covers one hundred acres I should think

Q. About how much land in that neighborhood has been covered with this sand and slickens?

1766

A. Down round about Brighton where I am acquainted with it, about four or five hundred acres

Q. Four or five hundred acres about Brighton?

A. Yes sir

Q. What is the effect upon the land of depositing this sand upon it?

A. Well, it kills every thing it strikes

Q. It kills every thing it strikes? A. Yes sir

Q. Will it raise grain?

A. It will not

Q. Will it produce anything? A. No sir, it will not produce any thing for several years

Q. For several years?

A. Yes sir

Q. Will this sand produce any thing after several years?

A. I can not say whether it will or not because there came down sand last year that was different sand

1767

to what sand ever came down before. It was a kind of poison in the sand and it burnt some way anything it strikes. Now this land I am talking about, I had it all in Alfalfa last year and raised about six to eight tons to the acres off of it

Q. Last year?

A. Yes sir. last year, the year after the flood I tried to raise seed on some of it and it started and sprouted and came up and I thought I would have a stand, but it came up to about a quarter of an inch or so and it burnt right out like burned tobacco — just take a little in your hand and it will make snuff, so I dont know what effect that may have

Q. How much land have you had injured or destroyed by this sediment and sand?

A. Well there was over two hundred and fifty acres

1768

injured very much. This White Sand is on about from seventy five to one hundred acres of it and that is pretty well destroyed

Q. Has it had any Effect on the fruit trees in your neighborhood?

A. In 1862 I had an orchard of thirty acres, I bought a place there where there was thirty acres on it. Our receipts used to be from three to four thousand dollars a year. The peach trees it commenced first on and cleaned them out. It commenced on the apricot trees and cleaned them out, it commenced on the pear and apple trees and it has moved upon them and I am taking them all out now and cutting them up for wood. Fruit trees wont grow next to it at all, you cant do anything with them

Q Now you say that up to

1860 or 1862 you experienced no difficulty in cultivating those lands?

A. It was as fine land to farm as there was in California

Q. Have you been able to cultivate it since that time

A. Since 1862. I had to change the whole process of my farming after 1862. I had to commence with vegetables, corn and alfalfa. I then picked out the best of it for little patches of grain but out of eight hundred acres there was not over one hundred & twenty or one hundred and thirty acres that was fit for grain

Q. Do you have any floods up there now?

A. Well, there was a flood last year

Q. How many floods have you had since 1862

A. I think we had four or five

1770

Q. Have you any levees there? A. No we never had a levee there

Q. You never have had any?

A. Never

Q. State whether or not it takes more or less rain fall now than in 1852 or 1853 to produce a flood?

A. It takes very little rain fall now to produce a flood where I am living because it is right even with the bank there

Q. What is right even with the bank? A. The river, the bed of the river

Q How? A. The bed of the river is right even with the bank and it will run right over it and a very small raise will put it over the banks now. There are no banks, the banks are gone

Q. The banks are gone?

A. Yes sir, and I think on my place they are a quarter of a mile wide. The American

1771

river used to be a narrow channel and all this undergrowth and trees are all gone and the old banks stick out in places, but take the banks of the American river they are pretty much all gone it

Q. How wide was the American river in 1852 and 1853

A. Well, I never measured, but it was a very narrow river. It was narrow with a deep bluff bank, a very pretty stream of water, it was a very nice stream of water

Q. At this time you say it is how much wider than it was then? A. Well, I think at my place, a part of my farm it is sixty or seventy rods and perhaps it is more. I lost over thirty or forty acres of land since 1862

Q. It is sixty or seventy feet wider than it was? A. Yes sir.

1772

Q. Or sixty or seventy rods wide? A. On a portion of my land I lost sixty rods of it

Q. It is that much wider now than it was in 1850?

A - Yes sir, and the stream is changed altogether. In 1850, from that up to 1862, it went around an island the American river did. It cut that island and left it on the north side of the grant, the north side of the river, and now it runs straight down, so the stream is not where it was from 1850 & 1862 in a portion of Brighton - the stream has changed altogether

Q. Did you ever undertake to go down the American river from your place to the Sacramento, to its mouth?

A. Did I ever go down from my place to the mouth of the American river? - yes, I went there several times

Q. When did you first go down? A. I used to go to Smiths Gardens when they were out there I think in 1866 or 1867, I used to be out there a good deal and used to come to Sacramento and go back that way

Q. Did you experience any difficulty in coming down the stream, or did you go in a boat?

A. No, I did not go in a boat. I used to go down from my place to Smiths Gardens and come on down here — I would take a buggy and come down

Q. When did you come down last?

A. Oh I came down there a few years ago

Q. How much would you say on an average, the bed of the American river has been filled up since you first saw it coming down that way?

A. Oh, I think it has

1774

filled up from twelve to fifteen or twenty feet. It is just in places you see. Some places it is filled up higher and some places it is not filled up so much. But take the American river from the mouth of it up to where I live I think it would average from twelve to fifteen feet

Q. Filled? A. I think so, and some place a great deal more.

Q. Does it require as much water to produce a flood as it did in 1850?

A. It does not

Q. What proportion do you think it requires?

A. Well, I do not believe it would require 1/6 part of the water now that it would in 1850 or 1852

Cross-examination of John Rooney

Mr. Catlin. You have about eight hundred acres of land

A. Between eight hundred and eight hundred and fifty. I had it surveyed, but I have not got it now because a good portion of it is in the river

Q. What is the extent of your front on the river? How many miles front is it on the river?

A. I think it is about a mile and a half

Q. And how deep, how far back does it extend?

A. Well, I guess it runs back over a mile and a half, some portions of it do — it is not quite a mile and a half on the river I think because there are some little pieces there

1776

Q. It is just a mile and a half by the Assessors plat and about a mile back and that would make about Eight hundred acres?

A. Yes sir

Q. And now how much of that land did you lose by the big flood of 1862?

A. We did not lose a great deal of land in 1862. We lost a part of the bank. The cave was not very severe in 1862

Q. Did that flood cut away the natural banks of the river on your land?

A. It cut a portion of them away

Q. How much of it did it cut away? You stated that you lost about forty acres in 1862, how did you lose that land?

A. I did not say I lost it in 1862

Q. Then I misunderstood you. When did you lose that 40 acres

1777

A. We lost a portion of the land in 1862 but we did not loose that much land in 1862.

Q. You stated you lost forty acres of land, state how you lost that and when?

A. It commenced caving from 1862 up to 1880.

Q. It caves off a little every year the natural bank does? A. Yessir

Q. What causes it to cave? is it because the river is eating in on your side and leaving land on the other?

A. Well that is one cause of it certainly.

Q. Then from 1862 up to this date the river cutting in against the natural banks have cut away about forty acres of land on your side of the river there, has it?

A. ~~Yessir~~ I think it cut away very close on to forty acres, I would not be positive but I think it was very close

1778

on to forty acres, I never measured it

Q. You had alfalfa last year — not 1881 but 1880, that you cut six or eight tons to the acre? A. Yes sir, that land that you were over I think it would average six to eight tons

Q. What was that alfalfa planted in — what kind of soil? A. There was a good deal of that planted in slickens that came down in 1862

Q. That was planted mostly in slickens that came down in 1862?

A. Pretty much all of it was planted there but you would strike old soil

Q. How many acres of that kind did you have in alfalfa in 1880?

A. I think I had between four and five hundred acres

Q. How deep was that deposit upon which that

1779

Alfalfa was planted generally? - A. When I plowed for the ~~Wheat~~ Beet Company after 1892 I think we generally plowed ten inches for beets and some places we would strike the old soil and some places we would not strike it at all. I think it would average on the farm in certain portions of the farm, from eight to sixteen or twenty inches

Q. Did you raise beets on that land for the Beet Sugar Co.? A. I did

Q. Extensively?

A. They were raising them there for four years I think - yes they were raising four years there

Q. You supplied the Beet Sugar Co with Beets mainly didn't you?

A. I supplied them for two years and they farmed themselves on portions of that land for two years.

1780

Q. Those beets were planted in the deposit that was lodged there in 1862?
A. Yes sir
Q. Was it not also planted in some of the deposit that was left there in 1867-8 — This was in 1872 that you were raising beets
A. What year was I raising beets in there? Q. I understood you it was in 1872? A I think it was 1872 but I could not be positive about dates on it but I think it was about 1872
Q. Were not some of the beets that you raised for the Beet Sugar Co. planted in the sediment or the deposit which came upon your land in 1867-8?
A. Where the slickens came down it was mixed with leaves and sand and some of the clay and it raised a good beet, but the white

1781

sand came down and it raised no beets.

Q. It will not raise beets in fine white sand?

A. Well, it will not be exactly fine, but it will be mixed

Q. Well, what you call white sand? A. Yes sir

Q. Well, what proportion of it now was this white sand as compared with that which was covered with the material that you speak of containing leaves, sand and slickens?

A. I think it was from seventy-five to one hundred acres of that white sand

Q. And how many acres was there that you raised beets on?

A. We have been trying to raise beets on the four hundred acres and we could not raise them on four hundred acres and we raised them on about two

hundred and fifty acres

Q. Was all of that land more or less covered with this sediment?

A. Yes sir, all that land after the flood of 1862 was covered with that slickens

Q. This north levee comes right up very close to your land or perhaps to a part of it, how is that?

A. It comes about a mile from my corner from the lower end of my ranch

Q. The north levee of this City extends to within about a mile of the lower boundary of your land?

A. Yes sir about a mile I think, it might be a little over

Q. Did the flood of 1867 and 1868 overflow all your bottom lands there and extend clear up to the banks of that levee?

A. No, there never was any overflow on my land

1783

from 1850 to 1861 or 1862
It never was overflowed
Q. I am speaking of 1867-8
you did not get the date?
I ask you whether in 1868
the flood did not ~~cover~~
go clear up against that
north levee, nearly to the
top of it? A. Yes sir
Q. How much of that
bottom land did that flood
of 1868 overflow?
A. It overflowed it all
Q. It overflowed all your
bottom land?
A. It ran out as far
as the railroad
Q. How much of this
seven hundred and fifty or
eight hundred acres was cov-
ered by the overflow of 1867/8
— All of it?
A. I dont believe there
was over a quarter of
an acre in the whole
ranch but what was covered
except right where I built
my house

1784

Q. You built your house
upon a little knoll?
A. Yes sir, a little mound
like, I think it was all
covered except that
Q. Well, did that flood
leave more or less deposit
over all your land? A Yes sir
Q. I will ask you whether
when there is high water in
the American river you do
not feel the effect of the back
water from the Sacramento?
A. Yes sir, we feel the
effect of the back water
from the Sacramento — I
do not know if it was from
the Sacramento river or the
north levee. It may be the
north levee that we feel the
back water of
Q. Dont you think that
the north levee has the effect
of backing the water more
on your land than it other-
wise would be? A. Yes sir
Q. That is very plain to
1785 any mans observation is it not?

it is very plain to any man who will look at it during high water?

A. Yessir, that north levee backs the water up, certainly it backs the water up

Q. It backs it up over the whole of your land?

A. It goes over every foot of it except the house and I raised that about three feet higher. Only for the mound the house would have overflowed too

Q. You have been to Ranney Diggings? A. Oh, I have been on the Ranney Diggings three or four weeks ago or a month

Q. How high are the natural banks there upon John Taylor's land?

A. I never was down at the banks

Q You were not down at the bank? A. I was not down at the bank at Ranney Diggings I was not down there

Q. You were not down on the bank?

A. No, I was down to the
and down on that
say at Smiths

Q. How high are those banks there?

A. I believe I was down last summer at those banks. I think those banks at Smiths at one portion where I was I think would be seven or Eight feet.

Q. I was not enquiring about Smith, I was Enquiring about the land of John Taylor where the Farmers Diggings are situated?

A. I was not up there

Q. Were you up through the whole of Farmers Diggings or through the lower end of it? A. I was where they were farming. I was not at where they used to mine there

Q. You were not down in the mining? A. No sir; I was not

1787

Q. You can not describe the extent or the amount of deposit turned into the river from the Hammer Diggings?

A. I could not

Q. I will ask you whether the banks of the river right where Paterson's hotel used to stand, and where it is now cut away, is not just about as high as it was in 1850, from the low water mark?

A. I could not say. I know down below where the old house was, that is all gone away, but up above Paterson's house — I was not on that bank for six or eight or ten years and I could not say.

Q. Don't you know that the river made a new channel there by cutting straight down by Patersons and leaving an Island on the other side?

A. Yes sir, I mind when the made that channel —

1188

they made a new channel there

Q. When was that done?

A. I have an idea but I will not be positive, I think that was done in 1862 but I would not be positive of it. It was done below at the other island the same way in 1862. but up there I would not be certain whether that is so or not

Q. What effect did those two big floods, the one in December 1861 and the one of January 1862 have on the American river on the banks. State whether it cut away the banks

A. Yes sir, it cut away the banks and took very large oak trees — I think only for an oak tree that came down from Stevens' I would have been drowned. I lodged that night in one of those oak trees

1759

Q. It was one of the original oak trees growing on the banks of the stream

A. Yes sir, it was one of those natural oak trees that came from Patersons or Stevens' that I was in the next morning

Q. Were you living where you now live in January 1853 — say December 1852 and January 1853?

A. No, I was living up in that old adobe there

Q. Well, in the same neighborhood?

A. I was living very close

Q. What do you mean by the old adobe, just tell us where that was?

A. Down on the banks of the river

Q. How far above where you now live?

A. It was about seven miles, we call it seven miles from Sacramento.

Q. Were you here in the

1790

City at the time of that flood, about that time

A. 1851-1852?

Q. 1852-1853

A. Yes sir, I was there in 1852

Q. Well, how much did that flood overflow these bottom lands around Brighton there? A. They did not overflow any bottom land in Brighton in 1852. There was no overflow. I think the overflow commenced about what is called the Stewart place, above the Stewart place Sacramento moved to Hoboken then.

Q. When did the overflow first go over the lands there — Stewarts you say — how far was that below you?

A. It might go up a little higher than Stewarts place, that way about a mile and a half or two miles from the mouth of the river. The old road used to go down

there. He kept a tavern there at that time; it may be a mile and a half or two miles, I would not be positive what was the distance. I think it was about a mile and a half from Hoboken that they came down to the Stewart place.

Q. About a mile and a half from Hoboken?

A. Yes sir. Hoboken was about four miles from Sacramento.

Q. How far below your land was Hoboken?

A. Hoboken was about a half a mile.

Q. About half a mile below your lower boundary.

A. Well they called it Hoboken all around. There were several places of business where I live now at that time

Q. Was not your bottom land overflowed there in the by

1792

flood of 1852-3.?

A. No, I raised a big crop of barley and wheat on it. I put it in in October

Q. Did not it overflow and go off in time for you to put it in?

A. No sir, it did not overflow at all, there was no overflow in Hoboken because they moved from Sacramento and settled over there

Q. But that was after the water went down?

A. No sir, there was no water in Hoboken in 1851/2 because I was pretty well acquainted there at the time and there was no water there then.

Q. Why do you say that it dont take more than 1/6 as much rain fall ~~now~~ to produce ~~a~~ flood in 1850 as it does now. You say it did not take in 1850 more

1793

than 1/6 as much rain to make a flood as it does now? Why do you say that?

A. Because Mr. Hart. He did not say that he said just the reverse

The witness. The bed of the river is filled up from twelve to sixteen feet and the banks are all gone — I have seen my farm overflowed in September in one year here

Mr. Catlin. It is not founded upon any knowledge that you have of the amount of the rain fall that has fallen? A. No sir, I take it on these grounds, the way the river is filled up, the banks level, the natural banks gone and the bed of the river filled up level with the land that is my idea about it

Q. Well, now if the American river filled up to its original banks & clean across

the river?

A. Well, it is hugging right over on that narrow side — Yes, it is filled up pretty much all over, I have walked across it several times.

Q. You mean to say that the channel of the American river as it now runs is filled full up to the original banks? A. Well, in portions it is pretty well filled up with the original banks.

Q. When you speak of places where it is filled up it is where these large bars occur. They are nearly up to the level, or quite, in places to the old bank

A. Well, it is pretty well filled up from my place down all the way except in small portions that are not filled, sometimes it cuts in.

Q. Who joins your land higher up the river —

Who is the adjoining owner of land above you on the river? A. Mrs. Bowley.

Q. State how many acres she has?

A. She has I should think about one hundred and sixty, perhaps a little over one hundred and sixty acres, she may have one hundred and Eighty.

Q. How much front on the river and how much depth from the river?

A. Her front is not quite a half a mile wide, it may be one hundred and twenty rods, I think, I would not be positive upon that, about one hundred and twenty rods I think it is.

Q. Who are the next owners? A. Murray and Watt.

Q. How much have they got? A. Watt has got Eighty-five or ninety acres and he may have one hundred

1796

Q. What front has he upon the river?

A: From sixty to seventy rods I think, I will not be positive, it may be from seventy to eighty rods, I think it is.

Q. How much land on the Murray and Watt place has been covered by debris?

A. I have been farming there myself in 1851/2

Q. How much land has been covered by debris upon the Murray and Watt place?

A On the Watt place I think it is from ten to fifteen acres, would cover it, that was pretty bad

Q. That was covered mainly in 1862, was it not?

A. That was covered in 1862 because I had a crop of wheat in and it was covered up.

Q. Has it been covered up any since 1862, the Murray and Watt place

1797

A. The water has been all over it since 1862.

Q. Was there any sand lodged on it? A. It was sand yes sir

Q. I mean since 1862 — you say that there was from ten to fifteen acres covered and destroyed in 1862, then I ask you whether any more of it had been covered and destroyed since 1862?

A. I could not say

Q. Now next above that whose land comes?

A. That land used to belong to a man by the name of Fox, but I forget the name of the man it belongs to now, it has changed hands for the last three or four years

Q. How much is there of that tract of which you say you do not know the owners name?

1798 A. His name is Keller

Q. How many acres?
A. I think there is 137 acres in it
Q. Well about how much of this land has been covered with debris to your knowledge? A. In 1862, I owned it about 40 acres
Q. About 40 acres in 1862?
A. Yes sir
Q. Has it been covered with any thing since that you know of? A. Oh yes, It has been covered some since that mill race was running in 1862 and that was filled up.
Q. In 1862?
A. Yes sir, and inside that mill race I think there was 40 acres
Q. That is the old Sutter race? A. Yes sir
Q. That is the old race that Genl. Sutter built?
A. That is the race that ran down to where he was going to build his mill

1799

Q While you are on that subject where did that race commence, where was the dam?

A. It commenced at Patterson's and ran down to that ranch of Whitesides wher I now own

Q. It ran on the bank of the river? A. No sir, it did not run on the bank of the river, there was about 40 acres between

Q. Did not any of that race run on the bank of the river? A. No sir

Q. As it came down for several miles didnt it run on the immediate bank before it turned out into the bottom lands.

A. It commenced up at Pattersons and ran out to that Keller place and left 40 acres precisely between the bank of the river and the mill-race and then it widens out down to

1800

the Allen place. I think it was about 1885 that he took it in towards the river. X

Q. Didn't it run right on the edge of the bank of the river? A. Opposite Days place it run on the bank and that the St Louis house it was on the bank of the river

Q. Did it not in front of the Eli Wells' place?

A. It came down the river and crossed the road at the old adobe place and took another shoot out and went out onto the farms

Q. Is there any land on the Eli Wells place covered with debris?

A. Yessir

Q. So as to hurt it or damage it? A. It would damage it, yes sir.

Q. How much did it damage it? A. Oh, it will damage it along the bank there

1801

it will damage it some, I could not say

Q. Is not the old Sutter race to be seen there today nearly as plain as it could be seen in 1850 right on the bank of the river?

A. I could not say

Q. Have you been on there lately? A. I have not

Q. You do not know?

A. No, I do not know. May be if there is any left of it, but it must be a very small piece because above when the river rises it takes it all in the river. There may be 10 or 12 or 15 or 20 rods of it there but that is all there is

Q. You do not know how much of it is there because you have not been there?

A. Well, I know what is above there

Q. I will come to above there presently

1802 A Well, it is in the river up above

Q. How is it at the Eli Wells place?

A. There may be a portion on the bank there

Q. I am not asking for your conjectures, do you know whether it is there or not?

A. I do not

Q. Now then how many acres has Eli Wells? A. I think he has about 86 acres perhaps 100.

Q. The next above him is James T. Day is it not

A. Yes sir

Q. He has got about how much? A. Well I think he has 160 acres I am not positive

Q. Do you know how many acres of land he has lost by floods? A. I do not

Q. Can you tell going up from there, say the next one is Stevens and the next one the old Hoy place formerly Patersons. Can you tell how much land any of them

proprietors up there, speak now of your own knowledge — Have lost by the cutting away of the banks or by being covered with sand?. A. I would not say

Q. Well then where do you get the estimate of about four or five hundred acres you say in the vicinity of Brighton being covered and ruined by the debris I think is what you said?.

A. You will take Mrs Cutters place

Q. That is below you?.

A. Yes sir

Q. How much land has Mrs Cutter got?.

A. I presume she has 40 or 50 acres

Q. How much of her land has been covered?.

A. Pretty much all

Q. Has the river changed its bed by cutting into her land

A. Yes sir, there is a great portion of her land that

1804

went to the river, and it is in the river now

Q. The river has cut in and encroached upon the land so that where the land formerly was is now in the bed of the river?

A. Well before Mr Cutter got it Mr Connor had an orchard there and it has all gone into the American river except there may be one or two apple trees on the bank

Q. Is there any of Perkins land injured, J. C. Perkins?

A. No sir, Perkins is away back of the Railroad

Q. How far is it from the river? A. He has a portion adjoining mine. It is about a mile and a quarter or a mile and a half

Q. His land is just a mile from the ~~river~~ is it not? that is the part of it fronting the river is just a mile from the river is it not?

1805 A. I do not know

Q. Is there any of Peter Beckendorff? A. No sir, it is south of the rail road

Q. Has any of D B Reddings land? A. Yes sir

Q How much of his?

A. There is a portion of his bottom land there injured by the flood

Q. The ~~river~~ levee runs over a portion of the land does it not the north levee?

A. That is on the back part of his land, that is on the Sacramento Valley rail road. The railroad runs on it, that is that highland

Q. Well how high is it?

A. I never saw any water up to it

Q. It is just above the flow of the water? A. Yes sir

Q Did not the big flood of 1862 run over his land?

A. It ran over the bottom part of it

Q. Well where do you get the four or five hundred acres

1806

in the neighborhood of Brighton — you have named about 75 or 100 acres of your land that has been destroyed as I understand you?

A. Mr. Ames Mr. Cutter Mr. McCarthy — there is over four or five hundred acres of it

Q. Where is McCarthy?

A. Down at the Beet Sugar Factory.

Q Between the levee and the river? A. Yes sir

Q. How near does the levee run to the river there at its closest point?

A. At McCarthy's farm?

Q In that neighborhood — say just below Mr Cutter's. How far does the levee approach to the river — this north levee that runs east?

A. I think it is about half a mile from the river where it turned off at McCarthy's

Q. Don't the levee cause sediment to lodge in there more

than it otherwise would if there were no levee there

A. I think it does.

Q. Is not the bank of the American river between here and Folsom very irregular, that is the immediate banks are they not much higher in some places than others? — I am talking about its natural state prior to 1855, are they not high in some places and low in others? does not the high land come up close to the river in some places and then little bottoms go out in others, forming higher banks in some places than in others on the immediate bank of the river? — take the American river in 1855 and 1856 along there before there was any debris in the river, had it a uniform bank all the way up to Folsom?

A. No.

Q. Or was it very irregular? What was the natural height

of the banks on what you
would call the bottom lands?
A. In 1855 or 1856 we com-
menced hauling gravel out of
the American river for Sac-
ramento City
Q. That is not an answer
A. I am going to explain
it to you if you will allow me
Q. But you will forget my
question before you get through
— You know where the bottom
lands are? A I do
Q. What was the ordinary
hight of the banks there?
A. On the bottom land
Q. From the edge of the bank
down? A. I was thinking
to give you an explanation
in a manner that you would
understand it properly and
you would understand it prop-
erly too, because we used to
travel the banks once in a
while together
Q Well I will withdraw
the question — It would take too
long to answer it and it is not

1809

material. Can you tell Mr. Romney whether the water in 1862 was as high or higher at your ranch than it was in 1881? A. It was higher

Q. It was higher in 1862?

A. It was

Q. How much higher?

A. It was a good deal higher. I have a place on the Goble farm there, I think it must be very close to Perkins' place and I think it must have been from a foot to eighteen inches higher than it was in 1880

Mr. W C Belcher. Which do you mean that it was highest in 1862 or 1880?

A. In 1862

Q. From a foot to eighteen inches? A. Yes sir

Mr. Coblin. How did the flood of 1867-8 compare with the flood of 1861-2

A. I think the water never was as high at my place as it was in 1862

1810

Q. Never has been so high since?

A. I think so, it never was.

Mr. Hart. When did the most water fall, in 1862 or in 1880 - 1881

Mr. Catlin. You mean from the clouds?

Mr. Hart. Yes sir

Mr. Catlin (to witness) Do you know?

A. No sir, I could not say

Mr. Hart. You could not say

A. No sir, I could not say

Testimony

of
W. S. Manlove

Called for Plaintiff Sworn

Mr Hart Where do you reside Mr. Manlove? A I reside about 8 miles from the city front, on the south side of the ~~American~~ Sacramento Valley Railroad.

Q. How far from the American River A, Pretty nearly a mile from the American River, sir.

Q Have you any land there? A. I have about 345 acres.

Q. How near does your land extend to the banks ~~to~~ of the American River?

A. My valley land runs at one point within about 12 rods of the bank of the river, sir. There is a little fraction right between my place and the river

1812 Q How long have you

resided there. A I have resided there since the 5th of November 1851

Q. What's been your occupation? A I have been engaged in farming most of the time since I have been there almost continuously

Q. When you came to this vacinity, and located on your present farm, what was the character of the American River

A. It was a very clear pretty stream of water, rather a swift flowing stream

Q What was the nature of the bed of the river

A. The bed of the river in places had riffles, gravely or cobble stone riffles, across and then there were reaches of deep water, deep clear water,

Q. Was it a wide or narrow stream? A It was quite a narrow stream, sir

1813

Q. How wide was it from bank to bank.

A I should think about 300 feet probably. I

Q. It would be about 300 feet,?

A I should think not more than that.

Q. What kind of banks did it have at your place?

A. It had quite bold banks all along through the valley, about 20 feet above the surface of the valley.

Q. At low water mark?

A At low water mark

Q Did you ever have occasion to measure the depth of the water, near your place

A. I did in one instance sir

Q When was that? A. That was in 1853.

Q. When did you make the measurement?

A I made the measurement

1814

in front of Mrs Bowles' Ranch it is now

Q. How far is that from the mouth of the river?

A. That is about 7 miles in a direct line, farther by the course of the river, probably 10 miles by the course of the river

Q. Ten miles up?

A. Yes sir.

Q. What did you measure the river with?

A. I measured it with a line, and then measured the depth of the water on the line

Q. How deep did you find it to be?

A. I think it was in the neighborhood of 30 feet, there as well as I recollect at present

Q. What time in the year was it?

A. That was in the month of August

1815

Q Was the river then

at high or low water mark?

A. Low water mark

Q. How deep were the banks of the stream at that place from the bottom of the bed to the top of the bank

A. From the bottom of the bed at that place to the top of the bank would have made 50 feet or more

Q. How much of ~~that~~ to your land fronts on the river

A. There is none of it that fronts immediately on the ~~river~~ banks sir, there is a little strip, a little fraction running between my land and the river bank.

Q. How far up the river have you been acquainted with its bed, acquainted with the stream A. Well up as far as Folsom more or less at different times in past years

Q. How long have you been acquainted with the bank as far as Folsom?

A. The last 20 or 25 years.

Q. How did the bed and banks of the stream compare as you went up with the place you have already described?

A. The banks got much bolder as we went up stream towards the foot-hills.

Q. And higher? A. Yes sir.

Q. Were they steep all the way. A. All the way up the river?

Q. Yes sir. A. Yes sir I think so as a general thing.

Q. What was the nature of the soil through which the river ran

A. Well the lower part of it, the lower valley there for 10 or 12 miles above Sacramento City was a

a rich, dark alluvial soil. Of course as we got up to the foot hills it was more gravelly.

Q. Did I understand you to say that there was more gravel in the bottom of the stream?

A. Yes sir, when I first came here there was some gravel in the bottom of the stream causing riffles or falls in the stream near where I live

Q. Did you ever come down the stream to Sacramento in the Summer time?

A. Along the bank of it I have

Q. How did you find the banks of the stream and the bed of the stream, as you come up there? ~~from above~~

A. The banks continue bold all the way down as far as I came down the stream

Q. Was the stream straight or crooked?

1818

A. It was a very crooked stream - a great many bends in it.

Q. Did you find any very great difference in the width of the river in different places or was it usually uniform? A, About a uniform width from the old Patterson place 10 miles east of the city, from there down to the mouth of the river it was about a uniform width.

Q. Have you noticed since that time that the river has filled up, and if so, to what extent? A. Yes sir the river is filled up in front of where I live I should think as much as 18 or 20 feet

Q. What with. A Crystal sand, coarse white sand

Q. Do you know how far up and down that filling continues. A That filling continues about 4

miles — as far as my present knowledge extends

Q. Up or down? A. Down to the sugar beete ranch and up to the old Patterson Place.

Q. That is as far as you know anything about it?

A. Yes, I have not been down on the lower part of the river here for years except crossing the bridge.

Q. Have you examined the deposit in the river at different places to see whether it was of the same general kind and character

A. Yes sir

Q. What did you find?

A. I found where the current ran it is coarse white sand almost destitute of any of the component parts of soil. There is very little silt or clay mixed with it but where there is an eddy or a depression, and the water stands a length of

time there is what is commonly termed slickens

Q. What is the nature of this slickens? A. It is comparatively free from grit; it has a soapy smooth greasy feeling in the fingers

Q. Did you ever examine it to see how it compared with the soil in this valley

A. Oh yes

Q. How does it compare?

A. One has a soft soapy feeling, and the soil of the valley originally had considerable sand in it, but of a fine alluvial character.

Q. A different kind of soil entirely? A A different kind of soil entirely

Q. When did this filling in the river first commence? A I did not notice the filling of the river much until about 1861 or 1862. Since that time the filling has

1821

been going on gradually, some seasons more or less according to the stage of water

Q. Have you noticed this season what effect the coming in of the flood has upon the bed of the river. A Yes sir, I have noticed it at some seasons when the stage of water is not very high, that it fills up a good deal. When the water is very high, it scours out and fills in again

Q. Does that thing happen more than once a year or annually?

A I think it generally occurs with the first rise in the river

Q. The first raise scours the river out?

A Yes sir

Q Do you know of any reason for that?

A. The first rise scour

1852

ing the river out

Q. Yes sir. A I suppose ~~the first~~ it is owing to the force of the current coming down doing it

Q. Why is the current stronger during the first rise than afterwards?

A It is more charged with sedimentary deposit, more charged with sand and clay, seeming to give the water more force

Q. Do you think that the state of the Sacramento River has anything to do with the rapidity of the current of the American River?

A. Yes sir, I do Of course when the Sacramento is down the current is swifter up there a good deal, and when the Sacramento is up it makes it comparatively slack water

Q. How is it about the first rise of the American, is that before or after the

rise in the Sacramento generally

A. It usually occurs, when we have a fall or winter rain. It usually occurs from 2 to 3 days even before the Sacramento gets up

Q. Do you notice any difference in the current in the American at those times. A. I do not comprehend your question

Q. Do you notice any difference in the current of the American at those times from the current at other times

A. When it first rises, yes I notice that the current is a very turbulent one

Q. Any stronger or swifter than usual?

A. Yes sir, ~~very much~~ of course it is much stronger and swifter, and the waves come down running very high in front of my place I have stood

1824

on the bank often and watched them apparently the waves were 4 or 5 or 6 feet high

Q. Five or 6 feet high

A. Yes sir, I think I have seen them 6 feet high rolling down like breakers on a sea coast

Q. What is the cause of that do you know?

A. Well I have attributed it to the water being so thick with sand and clay that it dont run ~~off~~ with the same ease and smoothness that it does when it is free. The water at that time is very muddy indeed, and very thick and looks like it was half mud — it almost looks like a mass of liquid mud flowing there. That is the appearance it presents

Q. Did you ever test the water at such times to ascertain about the proportion of sand and mud and water. A. I have sir

1825 Q. How did you find it?

A Well I have dipped it up in an ordinary cup, and let it settle, an ordinary tumbler, and it would settle about three-eights of an inch thick

Q. What proportion do you think that would make of mud to water?

A Well I could not say what proportion that would be - it would be one-sixth I suppose

Q. At those times when the water is rushing down with those immense waves have you ever noticed whether you could see sand in the water

A. Well yes, you can see the particles of mud and sand. The water is so thick that near the shore where there is a little eddie the water will rise up and be mottled on the surface with the clay and sedimentary

1826 deposit that it is carrying

Q. You see it rising up?

A. You see it come up and when it comes to the surface it presents a mottled form it is so thick with mud.

Q. This liquid that you saw go down then you say contains about one sixth of mud and sand

A. Yes sir. I have tested it and I think it contains about 1/6 mud and sand

Q. Do you know where that runs to? A. It runs down the American River

Q. And into the Sacramento

A. And into the Sacramento presumably.

Q. Do you remember of any instance where you ever noticed the bed of the river being cleaned out at the first freshet?

A. Yes sir

Q. Scoured? A. Yes sir

Q. When was that? A. I noticed it more or less every season when we have the

1827

first raise, the river being down, that it will clear out the channel, and leave a bank of sand on each side

Q. How long does it ordinarily take the river to fill up again

A. I don't know, I could not tell you how long because I merely go down on the river when we have had several days rain to see what effect it has had on the river. I always do it myself

Q. How much have the banks of the river filled up, how much has the river filled up

A. I should think the bed had filled up ~~several times~~ on an average about 12 or ~~16~~ 15 feet along through the valley there, may be 20 feet, in some places it has filled up more than 30 feet in those depressions.

1828

Q How wide is the river now at your place?

A. I think it is about 30 rods - Oh, I am mistaken, it is more than that, it is 70 rods

Q. How high is it now from the top of the sand to the top of the natural banks

A. The sand in the bed?

Q. Yes sir

A. To the old original bed?

Q. Yes sir

A. It is pretty near level, from the top of the river at low water to the original soil

Q. I will ask you how does the carrying capacity of the river now compare with its capacity in 1850 when you first knew it?

A It is very much diminished I think

Q. How much has it diminished? A. I think about one half, probably more, at least ½ I should

1829

think

Q. Did you ever go down the American River since you have known of this filling up — did you ever come down to the mouth

A. No sir I ~~did~~ have not

Q. What has been the effect of this filling up of the river upon the lands upon the lands upon the banks of the stream

A. It has had a tendency to depreciate the value of the lands, along the stream very much

Q. Why? A. It has rendered them less productive

Q. How has it done that?

A. By filling the lands along the stream principally with coarse sand, coarse unproductive sand

Q. Is there any coarse sand on your land?

A. Yes sir

Q. How much of your land has been covered with it? A. There is

1830

about 30 or 35 acres that I own now that is covered with coarse sand

Q. When was that covered?

A. The principal fill there was in 1868. It was covered to a certain extent in 1861-2

Q. How deep is it now covered with this sand?

A It is covered from 2 to 5 feet in some places

Q. Have you noticed whether or not the bed of the river is growing less each year or growing larger each year

A. It is filling up, but growing wider from the abrasion of the stream on the banks

Q. How is it doing that, spreading the water?

A. Spreading the water and cutting the banks, and the banks dropping in

Q. The adjoining lands?

A. Yes sir

1831 Q. Does it take more or

less water now to produce a flood than it did in 1851 or 1852?

A. Well judging from our experience for the last few years, it takes much less water

Q Did you experience any difficulty in 1850 and from that time on up to 1860 in cultivating your lands, and using them for all purposes for which they were valuable?

A. No; we used it principally for raising grain at that time. It was as good grain land as there was in the State

Q. Did you have any levees?

A No sir

Q Did you need any?

A. No sir, we did not need any at all.

Q. When did you first commence to need levees, in order to protect your lands

A. Well 1861-2 was the first time that levees would have been of any service to us

at all. Previous to that time we had had no water over our lands to amount to anything.

Q. Did you construct levees after that?

A. No sir we did not sir

Q. You did not construct any. A. No sir

Q. Have you had any since. A. No sir

Q. How often do floods occur there now?

A. I think we have had since 1862 the valley under water 4 or 5 different times

Q. How many times had you had water over the valley there, before 1862—from 1850 to 1862? A. There was never any water over the valley previous to that time except during the flood of 1853, I think when this city was submerged, there was a small stream of water came down the old Sutter ditch and over-

1853

flowed the banks a little on each side over here — I rode through it on horseback, and I did not take my horse more than up to his knees

Q. You say you had it 3 times since 1862,

A. Yes sir I think 3 times — 4 or 5 times I think, first last Winter, and three times previous to that since 1862

Q Have you ever known of any general flood throughout this valley since ~~186~~ 1853, equal to the flood that you had during that year — during 1852, and 1853 I mean — was there any other flood equal to the flood of 1852 and 1853

A. Yes sir, on the American River Valley there we have

Q. I mean a general flood throughout this valley?

A. Yes sir, we have had several since then

Q Equal to that?

1834

A. Yes sir I think so

Q. What one have you had since then?

A. I think the flood of 1868 was equal to that and I think the flood of 1881 was equal to that

Q. Do you know whether as much water fell in 1881 as fell in 1852 and 1853?

A. I do not know of my own personal knowledge, merely what I have read from the reports of statisticians

Q. You did not make any measurement yourself?

A. No sir, I did not make any measurement myself

Q. What was the difference between the effects of a flood during the earlier days of California and the effects of the flood of this time on the adjoining lands

A. Well, the floods in the earlier days of California
1835 did not affect the value

of our lands, the water ran off in a very short time and left nothing behind it injurious to the land; now when a flood goes over our valley there it takes all Winter to drain off, and leaves behind this coarse white sand where there is a current, and where the water is still, and comparatively slack water it leves what we call slickens

Q. Can you raise anything on the slickens?

A. It is very injurious to vegetation as I found last Spring for the first time in experimenting with it, and it was very difficult to make seed germinate in it, and after they germinate they will not grow. I tried several different crops

Q Did you ever examine that stuff with a view of

1836 ascertaining what its elements

were. A Only mechanically sir, I only examined it by feeling it and looking at it. I never made any analysis of it at all.

Q. You never have seen any analysis made

A. No sir. I have never seen any analysis that was made

Q. What effect has this sand and debris that comes down here upon the waters of the American and Sacramento Rivers,

A. It renders them very turbid, sir and unfit for use

Q Are they fit for any domestic use? in the state in which they are during the Winter time here?

A. The waters of the American are not sir

Q. They can not be used for any purpose?

A. They are not fit for

domestic purposes, they are to much filled with clay and sand

Q. Are the waters of the Sacramento? A. Well they are less turbid than the waters of the American though at times they are very nearly as turbid as the waters of the American

Q. Did you ever notice the Sacramento immediately above the American?

A. Yes sir

Q What is the difference in the water of the Sacramento above and after the American has joined it. A. It does not seem to contain but very little sedimentary deposit above the American usually unless in very high stages of water when the American flows over into it

Q. Do you remember any sand bar formed in the Sacramento River just

below the mouth of the American? A. I cannot say that I was. I have been up there a good deal in early days, and I know the character of that stream in early days, but latterly I have not paid so much attention to them

Q. State whether or not the American River has cut another channel near your place? A. Yes sir

Q. A new channel?

A. Right in front of my land, it has cut a channel south of the old channel, nearly a half a mile and cut off a bend there, that was cut in the 1868 flood I think

Q. What has become of that channel? A. The old channel?

Q. No the other - the new one that it cut A. The new one is there, the whole river passes through that now, and it has done so for

years since that time

Q. Is it as deep as it originally was? A. As deep as the old channel originally was?

Q. No sir, as it orignally was

A. No sir, that has filled up a good deal since it was originally cut, and it is filling up all the while

Q. How much has it filled up. A I think that has filled up probably in places along there about 6 feet since it was cut there - 20 or 30 acres of sand bar right there, I think 6 feet deep at least

Q. Have you ever noticed the effect that the raising of the river bed has had upon the water and the soil? A. Yes sir

Q. What effect has it had? A It raises the general level of the water in the soil on my place, and in the valley about

1840

10 feet since 1868

Q. How did you determine that. A By measurement and by diging wells. I have had some 8 or 10 wells dug on my place, and when I first bought the place it was from 18 to 20 feet by measurement by digging a well before we struck water. No it is only from 8 to 10 feet in the dryest time of the year

Q. What effect does the raising of the water in the soil have upon your land if any- have you any orchards upon your land?

A. I have only one orchard and that is not on the lowest land. I have 2 or 3 orchards, but they are all on the higher land- one is on the valley land, but not on the lowest portion of it

Q. What effect does a deposit of this coarse sand have upon your land?

1641

A. It renders it valueless for cultivation. There is nothing but willows and coarse weeds grow on it where the deposit is deep

Q. Look at that bottle marked Hodgdon and say whether or not any of that kind of sand is deposited upon your land?

A. The sand that is deposited is coarser and whiter than this. The sand deposited up there looked almost as white as a snow field after it dries off and drifts back and forth – as the wind changes it drifts back and forth, and when the wind is blowing pretty hard from the north the whole atmosphere is filled with a cloud of white sand

Q. Can you tell from examining it what it comes from, what it is made of? A. No sir I cannot.

1842

Q. You say the sand is coarser and whiter than that.

A. Yes sir.

Q. Have you no sand as fine as that on your place

A. Yes, sir, but where the river breaks over it is very much coarser and whiter

Cross-Examination

W. S. Manlove

Mr Catlin Which were the years that these 4 or 5 high waters occurred since 1862?

A. Last season we had the water over the valley twice. Last Spring, a year ago, it was over the valley. In the fall I think previous to that it was ~~full~~ over the valley but not so much at that time, but once about 6 years ago, it was over the valley.

Q. Which portion of this country do you call the valley. ~~All~~

1843

A. All north of the rail-road lying between the rail-road track, and the river is usually termed the valley proper

Q. Just that portion that that lies between the railroad and the river?

A. That is what we term the valley proper

Q. That portion of ~~your~~ ~~your~~ land, the back portion of where you reside, where your orchards are, you do not describe that as being in the valley?

A. I do not, although the water has been up to my house, on two occasions when the river was exceedingly high

Q. When were those 2 occasions A. That was in 1868, 1862. I think. The last season the water did not spread over the american River valley, within a half a mile from the mouth

1844

Q. Your orchards have they been injured by this rise of the water in the soil

A. Not to any great extent. I have lost a few cherry trees, but not to any great extent, and some few peach trees last Winter

Q. Situated on what part of your land?

A That is lying between the railroad and the American River about half way between the 2 points

Q. That is what you call the valley. A Yes sir. That is valley land

Q. Take your land that is on the south side of the railroad, and which you say was overflowed in 1862, has this raising of the water level in the soil injured your land there, A. Well it has not injured it so far at present, but it gradually raises every year

1645

Q. I will ask you whether ~~about~~ a good deal of that land about there in your vacinity, east and south, would not be benefitted by having the water rise to a higher level, in the soil than formerly

A. Mine would not sir, I cannot say what any other man would wish, but I do not wish it to come near the surface for me

Q. Is it not a benefit very frequently to the lands, to have the surface tolerably near the moisture below. A. To have the water near the moisture below?

Q. I mean is it not beneficial for them to be able to strike water at 15 or 20 feet, rather than ~~to~~ go forty or 50?

A Yes sir, I suppose it would be in that

1846 case

Q. Well don't you suppose that there a good many men and ~~a~~ large of portion of land that would be benefitted by the fact that the water level has been raised supposing it has been made 8 or 10 feet, A. That depends on the use you wish to put the lands to

Q. It depends upon what kind of agriculture?

A. Yes sir, certainly

Q. Well, for all general purposes of agriculture?

A. No sir.

Q. Well what purposes would it be injurious to?

A. Well sir It would be injurious to a vineyard or a fruit orchard. My land back there is used principally for vineyard purposes. and if the water comes too near the surface, it ruins that ~~m~~ vineyard

Q. If it comes too near? But how near has it to come

1847

to the surface? A. Only a little more than it is now, I suppose if it rises 2 or 3 feet more it will destroy the vineyard

Q. How many feet from the surface must it come

A. It is now 8 or 10 feet, and if it raises 3 feet higher I think this land will be valueless for vineyard purposes

Q. The roots of the vines penetrate how deep?

A. I think the roots of vines in alluvial soil like that will penetrate 20 feet. I have never examined but I suppose they will. Fig roots I know will, and I suppose the vine roots will.

Q. Is not there land lying on the border of the railroad in what you call the American River Valley between here and Folsome that could be beneffitted by having the water coming nearer the surface

1848

than it formerly did?

A I could not say whether it would or not. As I said before it would depend upon the uses a man wishes to put his land to. If he wished to cultivate it with vegetables or anything of that sort, he wants it nearer the surface

Q. It would be better for raising grain, wouldn't it?

A. I think not

Q. For it to come near the surface? A. No sir

Q. It would for vegetables?

A It would for vegetables, yes sir

Q. You say that ~~you~~ the carrying capacity has been deminished—I would ask you whether the river is not much wider now, than it formally was. A Yes sir Verry much wider in places, and in fact all along.

1849 Q. Its former width was about how much?

A. I think about 300 feet

Q. What is its general width now?

A. Well it is from one-eighth to a quarter of a mile wide

Q. Is not the carrying capacity larger now than it was formerly.

A. No sir

Q. Why not? A. Because it is up near the surface

Q. It is now from one eighth to a half a mile wide?

A. Its width has trebled and quadrupled, but when I say it is from one-eighth to a half a mile ~~th~~ wide I mean the surface that the water spreads over when there is a very little rise. In some places there are no banks to that at all, in a low stage of water it is almost even with the land

Q. Have not the natural
1850 banks been cut away in

places. A. Yes, sir

Q. Were not some of those natural banks cut away to your knowledge by the overflows of the American River prior to 1862

A. No sir

Q. You do not know of any? A. I do not know of any place at all on the whole river that was cut away prior to 1862

Q. Has not the natural bank of a river, and the highest bluff bank of the river between Routier and Patterson's old place cut away a great deal?

A. Yes sir, It has cut in and caved off without materially changing the bank, just worn away

Q. It has moved the bank further to the south?

A. Yes sir. My land impinges on the river there and the river has cut in under it

1851

Q. It leaves a bar on the other side? A Yes sir it leaves a large bar

Q. Is not the carrying capacity of the river greater at that point than it was in 1870, at Patterson's

A. No, sir I think not, and I will tell you why if you wish to know. The bed of the stream there is filled up a great deal with sand

Q. I will ask you another question; this sand that you speak of how does it compare with that sand (showing witness a bottle marked by the reporter No 6)

A. That looks very much like it.

Q. When that is spread out in a sheet it looks whiter than it does there?

A. Yes sir, when it is spread out it gets very dry and very white on the surface

―― # ――

1852

Testimony

of

A. S. Greenlaw

Recalled

Mr Hart You testified here before? A. Yes sir

Q. Do you know anything about the roads leading north from the City of Sacramento prior to 1867 and 1868?

A. Yes sir

Q. How many roads were there? A. There were 4 roads leading from Sacramento north crossing the American River, between the mouth of the American River and Smith's Gardens.

Q. Well, sir where did the first of those 4 roads run from and to and through what country,

A. The road starting from ~~the~~ Front street crossing the mouth of the American River and running up the bank of the Sacramento River it branched immediately

1853

after passing the crossing of the American River, and a second branch crossed and connected with the Marysville road about 6 miles north of Sacramento City, - five or 6 miles. The second road leading from Sacramento City connected with Sacramento City at 12th street, across the the American River at Lyles' Bridge

Q. Do you know where it ran to? A. That road connected Sacramento with the northern part of the State and County, running to Marysville, with a branch running to Auburn and Nevada, and that section

Mr Catlin The witness has been over all this before

Mr Hart Were you examined on this question before?

A. No sir, The third road connected Sacramento with 20th street, and crossed

1854

at Lyles' Bridge. The fourth road connected with Sacramento crossed the American River near Smith's Garden. Those are the roads connecting Sacramento City with the country north of the American River

2. What has become of those roads? A. Those roads have been destroyed except the second. the second road has been raised three times since I have lived there. The last time it ~~has~~ was raised about three feet

The Court, That is the twelfth Street road(A. Yes sir And it was raised and Macadamized with gravel to the depth of six inches on top and the water the last big flood flowed over that road to the average depth of three feet, some places more

Q. It washed out several places in the road

1855

A. It washed away and washed it off. It washed the gravel the whole distance. the road is gravelled from North B Street to—

Mr Catlin objects to the question upon the ground that he had described that road before. He described it just the same as he does now excepting that now he has it in a little stronger terms

The Court My memory is that he described the roads across Lisles Bridge

Mr Hart That you say was in 1881? A. Yes sir that was the last flood

Q. Could that road have been travelled in 1860 during the winter times? A. I do not know about 1850. It was a stage road from 1850 ~~and it~~ until 1862. there was no interruption on that road to Lisles Bridge.

Q. It could be travelled at all times in the year

1858

A At all times in the year

Q. Can it be travelled in the winter now, during any ~~weather~~ winter of ordinary high water

A. No sir

Q. It cannot? A. No sir the travell has been obstructed there for the last four years during portions of the winter

Cross Examination
of
A. S Greenlaw

Mr Catlin where did that road that crossed at smiths gardens go do you know? A. I say that road is destroyed for travel.

Q. Where did it go to before it was destroyed I ask you?

A. It went to Auburn. it crossed the river near Lisles bridge connecting to Auburn and other points

Q. Did they ford the river there? A. No sir there was

1857 a bridge there until 1862

Q. How did they get over the river at Smiths gardens?
A. By a ferry bridge or road. Up to 1862 they crossed the river on a bridge
Q At Smiths gardens? A yes sir near there
Q. What bridge was that
A. That was the Norris bridge so called
Q. How far was that above Lisles Bridge? A. I think they call it a mile and a quarter
Q When was that first carried away? A. In 1862
Q. Was it rebuilt? A. no sir
Q There was a bridge there known as the Norris bridge about a mile and a half above the American river bridge near Smiths gardens. That was carried away in 1862 and that was not rebuilt and there has been no bridge there since
A. Yes sir Mr Babcock had a ferry there
Q. He kept a ferry there
1858 A. Yes Sir

Q How long did he run the ferry? A. I cannot say as to that

Q Where is this number one, where did that go to? A. That led from first street across the mouth of the American river, one branch extended up the Sacramento river and another branch of that road extended across the lands of what is now Clarks ranch

Q. Answer only what I ask you I did not ask you that?

A. I thought you asked me where it led to is not there a road over there now? does not Mr Clarke, the firm of Cot and Clarke keep a road open there for the public in the summer and a bridge there

A. No sir there is no ferry there this summer

Q. A bridge then? A. They put in a bridge in September, a pontoon bridge that connects with the sand bar and they come down on the sand bar

to Sacramento
Q. Is not that a private road maintained there now
A. No sir only Mr Clarkes private road that he commenced there late in the fall,
Q. Where did that road formerly lead to? A. There was a settlement on the American river,
Q. It was a private road?
A. No it was a public road. There was a school house there. And in that section from that river to the north line of Sacramento, every half mile was a farm
Q. I will ask you whether or not there was any use for a road over there now?
A. Yes sir the same that it was used for last—

— || —

Adjourned until

November 23d
1881
At 9.30 A.M

1860

In the Superior Court of the State of California in and for the County of Sacramento

The People of the State of California
vs.
The Gold Run Ditch and Mining Company

~~Saturday~~ Wednesday
Nov. 23rd/81

Transcript of Testimony
Vol. 6

Index

William Millgate direct 1861
William Johnston " 1883 x 1934
J. M. Upham " 1983 x 2003

Winfred J. Davis
Official Reporter

In the Superior Court, in and for the City and County of Sacramento, State of California

The People of the State of California vs. The Gold Run Ditch and Mining Company } Morning Session Wednesday November 23rd/81

Testimony of William Millgate

Called for plaintiff sworn

Mr Hart. Where do you live?
A. I live in Sacramento
Q. When did you come to Sacramento County?
A. The 28th day of November 1852
Q. Where have you resided since that time?
A. I lived twenty two years on the river, on the American river on the north side

1861

Q. How far from the City of Sacramento?

A. About one mile from the City across.

Q. State whether or not you had a farm over there?

A. I had one hundred acres

Q. Where is it, above or below the bridge?

A. A half a mile below the bridge

Q. Was there any body interested with you there in the one hundred acres? A. No one else, only me and my brother

Q. What was your occupation while you were there?

A My brother took up the ranch in 1850 and he sent for me to come out and help him, he told me to come out and I should be a partner with him. I came out here and we cleared the ground and he raised vegetables

Q. How many acres of vegetables did you cultivate there

A. We had thirty five acres of vegetables at one time

1862

Q. What year was that?

A. It extended from 1852 to 1861

Q. During the time that you were there did you have occasion at any time to cross the American river? A. We did over on the bridge

Q. How often?

A. Every once or twice or three times a week sometimes, and sometimes we did not go for a month

Q. How far was your house located from the banks of the river? A. About five hundred feet or six hundred

Q. How often did you see the river while you were there?

A. I saw it every morning, every day, oftener than we wanted to

Q. What was the character of the river opposite your place at that time?

A. The river was running in front of our place, it was called deep water, and we dry

1863

a well in 1853 and it was twenty two feet deep to the water

Q. From the top of the bank to where you struck water?

A. From the level of the bank, the top of the ground to the water was twenty-two feet.

Q. In the winter or summer time?

A. We dug the well in the fall at low water

Q. What kind of banks did the river have there?

A. It had kind of sloping banks

Q. High or low near the river?

A. Well, I considered it was twenty two feet from the top of the bank to the water

Q. Perpendicular hight? was it twenty two feet in low water from the top of the bank, perpendicular hight or on the slant?

A. It was twenty two feet from the water to the level of the bank on top, perpendicular hight. If it was straight up

1864 it would have been twenty two

feet perpendicular

Q. What was the character of the bed of the river?

A. In the bed of the river when I came there, was considered gravelly, small gravel, We used to cross above the bridge 1853

Q. How large were the gravel?

A. Well, I considered them as big as beans

Q. Any larger than that?

A. Well, I did not see them any more than that, I considered it a kind of gravelly bottom and we used to cross over there during the summer time coming to town

Q. What kind of water did the river have? A. In front of our place I considered it was about fifteen or sixteen feet deep

Q. Of what kind and character?

A. Well, I never sounded the bottom

Q. What character was the water, clear or muddy

1865

A. When I came here it had rained and the water was kind of roily and it was not clear, but before that it was clear.

Q. Did you see it after 1852 and 1853? A. I came here on the 28th of November and it had been raining.

Q. Did it ever become clear after that? A. It was clearer than it was when I first came, in the summer time.

Q. Could you see down in the water in the summer?

A. Yes sir, I could see down in the water when we crossed the river.

Q. How deep? A. Where we crossed it would be three feet deep above the bridge.

Q. What could you see in the water? A. The water was kind of gravelly, and the water was a little roily.

Q. What could you see in the river? A. Well, I don't know as I could see any thing

1866 when the water was roily.

Q. Well, I ask you what you could see when it come there?

A. Well, I could see fish running up the river, I could see lots of fish all on the banks of the river

Q. How long did you continue to use your place for gardening purposes? A. My brother used it from 1850 until he died in 1874 in January

Q. During that time did you notice any changes in the bed of the river? A. Yessir sometimes the sand bars would make on one side of the river and sometimes on the other side

Q. Were there any sand bars there, that is the first question?

A. Not when we first went there

Q. Were there ever any sand bars there? A. When do you mean?

Q. Anytime A. Well after the big flood of 1861 they came there

1867

Q. How big?

A. They used to reach clean across the river, sometimes half across.

Q. How deep?

A. Well, I never [did] not measure them but they used to be sticking out of the water

Q. How? A They used to be above the water, two or three feet above the water.

Q. That was in 1862?

A. No, after 1861 and 1862

Q. You noticed that the sand was one, two or three feet above the level of low water or high water? A. Low water

Q. Well did you notice any increase in the amount of sand there? if so, when?

A. From the flood of 1861/2 We left a wagon in the road on the ground and the river raised in 1861/2 and it brought up sand and covered that wagon right up over till there was not but four or five

1868 inches left out, that [illegible]

we could see where the wagon was and we had to dig the wagon out — When the water went down we had to dig it out and it was about five feet deep

Q. How long was the water up at that time?

A I do not remember exactly how long, a week or two

Q. Where was this wagon located?

A. Right in the road that went from town to the house, and it buried of our fences that were five feet high.

Q. Buried them fully?

A. Buried them up with sand and sediment

Q. Did it cover them entirely

A. Only just saw the posts stick up about eighteen inches above the ground. It buried up all the fences. The fences were made out of poles and brush

Q. When was that?

A. In 1861-2

Q. How much of that land

1869

was covered with sand in this way 1861-2

A. Well, I should say all of it but we had a kind of ridge that ran east and west. On the outside was all swamp and slough land

Q. Made so by the flood of 1861-2 or before that time?

A. The sloughs were there before but it covered the land from three to ten feet

Q. What with? A. With sand and sediment

Q. What proportion of sand and what proportion of sediment

A. Well, it depended on how the water went through. Where the water ran through the land, all over the land, it left coarse sand and where the willows protected the land the sand stuck in the river and there was brought in sediments

1870

Q How deep has the river been filled there with sand opposite your place

A Well I considered the water was sixteen feet when I came there and it brought it up there until my boy could walk across the river and the Chinaman could walk up there knee deep, and on this side of the river it raised up level with the bank so that I considered it about 36 or 38 feet deep on the other side on this side it is raised up about 36 feet and on that side it is washed away. by making the railroad on this side it throwed the water down on to us during the earlier days from 1850 to 1862 — ~~did you~~ did you experience any difficulty in using the land over there for gardening purposes

A. In 1852 we did not there

1871 that is when I came there

The first year my brother
Settled on there it was a dry
year and he did not make
enough to pay his seed, the
year I came there from 51 and
52 it began to rain when
I got there in november and
it brought water in there some
four feet deep and it left a
deposit on the ground that we
Considered for the land. it did
not bring any sand.

Q What was the nature of that deposit
A. Kind of a Slum and mud
mostly came from the Sacramento
river the back water ran
over and ran into the american
Q Where did this sand come from
that you speak of
A It came down the — river
it came right down the river
we could see it coming down
the river in waves and at
every open space the water
came in on the land leaving
Coarse sand on the ground
Q Now you say in 1861-2 Slum-
1872 gullion was left there or the mud

and you considered that good for the land

A Yes sir

Q Now then I ask you whether or not you experienced any difficulty from that time on

A. Not till 1861—2

Q Did you have any flood after 1852

A. Yes sir we had one or two floods and we always Considered they done good

Q How long did they remain on the land?

A Only remained two or three weeks Mostly from the sacramento water

Q What was the difference between the floods in 1852 and 1862 And the floods after that time

A Well the flood of 1862 before they leveed here in this town the water ran off south and it came up there and stayed for some four feet on the Ground and we considered it good and it left a lot of Mud and the mud Came

1873 into the house and nothing

but mud

Q And since that time

A. Since that time in 1861 & 2 it come in gravel mud and slum from the American river

Q Gravel mud and slum

A. Gravel mud and slum according to location

Q now you say that your land was covered over from 2 to four feet deep — what was the depth

A. From three to fifteen feet

Q And it covered the land that you were on?

A. Yes Sir

Q What is the nature of the stuff that covers it?

A. Sand and slum and mud and everything else according to the situation where it comes in,

Q. What is the is the deepest — what is the character of the material that has covered it deepest?

1874 A. Well I should think the

Sediment, the slum
Q. Deeper than the sand
A. The sand is where the water run swiftest and left the Coarse sand in the bottom
Q. Is the ~~Sacramento~~ American now able to Carry as much water as it was in 1852 when you came
A. No Sir
Q. Why? A. because it backs further away, it backs over on the north and south
Q. What is the difference in the Channel - I have not asked you where it backed. I asked you why it Cannot
A. Because the sand bars are in the river and it is narrower
Q. What is that? A. There are sand bars in the river and the river is narrower.
Q. is it as deep as it was
A. No Sir. Q. Not as deep and not as wide A Not as deep and not as wide - Q. what is the Condition of that land over
1875 there now? A. It is so that

They cannot raise anything at all on it only willows.
Q. How long since it has been cultivated? A It was cultivated last year and they abandoned it this year. it was cultivated the year before this but this year they abandoned it
Q. Is there any one living there now? A. I believe not any body but Chinamen. I have not been on the place but two or three times in seven years. Q. Can any one get there in the winter time
A. Well it would depend on whether the water is very high or not
Q. Well I mean the ordinary high water mark? A. No
Q They cannot get there
A. No sir
Q. How was it in 1850 852
A. You could get there any time and every time
Q. You could get there any time from the City of Sacramento

A. Yes sir
Q. How did you go there
A. Went there with wagons on the road and then crossed the river on a boat and came up 20th Street - sometimes the water would be up and we would have to go through the water and sometimes we did not have to and sometimes we would have to go in with a boat
Q. How long a time last winter was the water in such condition that you could not get there? A. I do not know I was living in town. I did not go over to see
Q. Do you know how deep the water runs over that land now ordinary high water?
A. No sir. I do not know now because the land is raised up so I do not know, I have not been over there the place was cut up in sloughs, there was a slough in front of our
1877 house and a slough in back

of the house and that formed ~~the river~~ a part of the river ways and they are all filled up level with all the land

Q. Did the water used to cover this land in ordinary high water? A Not ordinarly but extraordinarly high it would

Q Very high water it would cover it? A. It would. there were floods that would not come in the high ridge but the back land and sloughs would all fill up. it was a kind of ridge that runs right down

Q. Where did the water run to that came out of the american river on to this land in 1852 and from that time up to 1862

A. Well it came into the sloughs and ran around and came out again at the Holden slough

Q. Where is that slough

A. Blow our house about three and a half miles

Q Where does it empty

1898 A. It empties into the american

river
Q It empties into the American river? A Yes sir
Q. It went around your place
A. Yes sir our place was a kind of Island.
Q. Is there any place for the water to go around there now)
A. No sir. it is all filled up now, it is filled up and the entrance is filled up
Q Did you ever notice during the state of high water since 1862 whether or not sand came down the river
A. Sand came down the river every time a flood came in 1861 & 1874
Q Did you ever notice the sand in the water? A Yes sir I have taken up a drink of water and there was a good deal of grit in it and I could not drink it. I would take up a dipper of water and it would be full of grit. the water was running from the river at the same time

1879

Q. Do you remember of any time particularly when you did that? A. I did that in 1861-2
Q. Did you do it afterwards
A. Yes sir
Q. Do you remember when
A. Yes sir in 1867-8
Q. What effect did the first flood of 1867-8 upon the river here? A. Well it formed sloughs in places that is it filled up sloughs in places where the water used to run down through and it made sand bars - you could see sand bars sticking up in places
Q. Sand bars that had never been there before? A. Sand bars that had never been there before
Q. Do you know whether or not there was any scouring out of the river in 1867 and 68
A. Well, I had my leg broke and they took me out about three miles there and after about a couple of weeks I came back it was full of

1880

Sand bars in the river and when the water went down it scoured out the river and when the Sacramento Kind of backed up again they formed again and when the water all went down again at low water there was sand bars again

Q The sand bars came again
A Yes sir
Q. Have you ever noticed this process of scouring out and filling up again?
A. Yes Sir
Q. very often? A. Yes sir
Q. How often have you noticed it? A. after the big flood comes, the first flow of water brings down a great quantity of water washes out the bed of the river and as soon as it settles, as soon as the Sacramento ~~than~~ they backs up they form sand banks again
Q. As soon as the Sacramento fills up? A. Yes sir
1881 Q. Do you Know the reason for that? A. because so much

Sand comes down,

Q. Well, I know but do you know why it settles when the Sacramento fills up

A. Because the Sacramento river has more force than the american has, after the american has lost its force then it is still water

Q. Still water in the american?

A. Still water in the american

Q. The sand settles?

A The sand settles

Q The first flood rushes right through does it? A. Yes sir

(No Cross Examination)

1882

Testimony of
of
William Johnston
Called for plaintiff

Mr Cadwallader; when did you come to this city? A. I arrived in Sacramento on the 26th day of August 1849

Q. Where have you lived for the last thirty one years.

A. On the Sacramento river about fifteen miles below here on the east bank

Q. What have you been engaged in? A. Farming

Q. Can you point out your place on this Joy map? A. Yes sir it is marked Wm Johnston

Q. What have you been engaged in? A. Farming

Q. Do you recollect the American river opposite Sutters fort in 1849

A. Yes sir

Q. Did you ford it? A Yes sir

Q. What was the condition of it

A The water was clear

Q. What kind of bottom and banks did it have

A. The bottom was clear and gravelly and the banks were bluff

Q Did you settle on the banks of the Sacramento river in 1850 - You have been in the habit of travelling up and down there

A Yes sir

Q How often? A. At least once a week

Q Did you travell both ways up stream and down

A. Yes sir between here and my place once a week

Q How deep was the water in the Sacramento at those times

A. The water at low water was -

Q How much water was there in the channel,

A. About 20 feet, an average of about 20 feet across the river

Q. From shore to shore?

A. Yes sir

Q. What kind of banks did it have. A. Bluff banks

Q. What was about the

1884 width of the river?

A. Well, I never measured the river, but from the eye I should think about 600 feet.

Q. You live immediately on the bank of the river? A. I do.

Q. Within view of the stream? A. Yes sir

Q. You can look up and down from the house at all times? A Yes sir I have a good view up and down the river both.

Q. What did you have to say about the commerce of the river being carried on with sea-going vessels in early times? A. It was carried on partially by sea-going vessels. All kinds of vessels were on the river.

Q. But what were the notable sea-going vessels?

A. I recollect of the steamer New World, the Senator and a large propeller

1885 Q The Hartford?

A. The Hartford and the Makim - those were propellers the Hartford and the Makim

Q. How did those vessels compare in size with the vessels that succeeded them such as the Yosemite Cryssopolis and the Capitol? A. My recollection is that the Yosemite and Cryssopolis, perhaps especially the Cryssopolis was the largest boat

Q. Do you recollect the Capitol? A Yes sir; I don't know the capacity of those boats, but my recollection is that the Cryssopolis was the largest. They were all large steamers

Q. Do you recollect how long those large steamers navigated the river between its mouth and Sacramento? A. They were there about to 1868. I know they were on the river in 1861-62 and '63, at the

1886

time of the flood, and some time after that, I dont know exactly how long

Q. You do not recollect exactly? A. No sir I could not give the date when they were taken off

Q. What changes have you noticed in the river since you went there? A. The first 10 years I was there, I did not notice any changes to speak of

Q. Any changes in the bed of the river and the banks of the river, the water? A For the first ten years, no sir not that I know of. Since that time the bottom of the river has been gradually filling up and bars being formed

Q. That is 15 miles below here? A. Yes sir

Q. Well how much has it filled up in the last 10 years? A. About 10 feet

Q. The last 10 years? A. Yes sir

Q. How has the filling been

1889

going on in the last 10 years?

A. The most of the filling has been in the last 5 or 6 years

Q. The most has been done the most of that 10 feet.

A. Yes sir, and more done in the last year than any preceding year

Q. How much has the fill been in those places. A. I don't know

Q. Have you noticed any places were the fill is 20 feet?

Mr Catlin Objects to the question

Q. State the greatest fill that you know in the river occurring since 1860, say?

A. Well the greatest fill is nearly opposite my house. When you ask me of other places, I cannot, away from that vacinity, I know all about it just in that immediate vacinity.

Q. Well, what is that fill?

A. Well, there is a sand bar there as high as the natural

1888

river where the water was 20 feet deep with the bank of ~~break~~ 12 feet high

Q. How much is the fill there? A. It is up to the natural bank of the river

Q. Well what is the fill in the channel? A Well, really the channel went nearly across the river, in early days, and it must be at least 30 feet of sand right opposite my house, just a little below the house

Q. What kind of sand is it that has come in there? in the last 10 years? A. What we call slickens down there

Q. Well describe it? A Well it is a mixture of sand, and white clay forming a white substance

Q. Well what is its appearance when it is wet?

A. Yellow - a kind of yellow appearance

~~Q. Will the leave was cor~~ Q. Well is it stickey?

A. Yes sir.

1889

Q. What is its appearance when it dries up? A. Well it gets a little whiter as it dries

Q. It cracks? A. Yes sir

Q. Well how deep have you known it to be there in the river channel since 1860?

A. Well there is this bar that I speak of, and another one on my place with a bend below where the channel has been burried up, and the sand and sediment was as high as the natural bank or nearly so, perhaps a little slope off, but you cannot tell now where the old bank ceases, and where the new bank commences, unless you find some old sycamore stumps, to be governed by, but a person to examine it now could not tell where the old bank was

Q. Look at some of those bottles there, and see whether you recognize any of that material down in your

1890

neighborhood? A. I recognize No 6 as material that came in from the flood of 1881.

Q. It came from where?

A. It came in on the land from the breaks in the river

Q. Whereabouts? A. Well especially on the Whitcomb ranch

Q. The Whitcomb ranch marked on this chart?

A. Yes sir, it is just above my place

Q. A place just above your place? A. Yes sir, a large break in the levee there

Q. Just designate that first bottle that is marked there?

A. That is marked No 6. Here is a sample of such slickens, as settles on the land ~~naturally~~ latterly. The bottle is not numbered. It is marked "Hodgdon slicken"

Mr Catlin: What did you say about that? A. This resembles the material that

1891

settles on the lands during the overflows of late years, within a few years back.

Q. That is marked "Hodgdon slickens" is it?

A. It is marked W. Hodgdon. Here is a bottle marked No 3 that resembles the sediment of an earlier date in our neighborhood, a darker color.

Mr Cadwalader That is A. S. Greenlaw, 1862? A. It is marked 1870. Here is a bottle. There is very little of that kind of material in our neighborhood as yet. It is marked "Hodgdon gray sand". A little of this came down on the Whitcomb Ranch last Winter, the first that has ever been done in any neighborhood - a little of this came on to the Whitcomb Ranch in the flood of last Winter. It is the first that I have ever noticed as low down as my place. This, (No 5) is the appearance that it has when it is wet?

1892

2 State what effect the raising of the channel of the bed of the Sacramento river down in your ~~[illegible]~~ neighborhood has had upon the adjoining land in the matter of overflows? A. It takes less rain to overflow the banks of the river now than it formerly did. In the spring of 1862, or the spring of 1861/2 we had thirty six inches of rain

Mr. Catlin How is that?

A. In the winter of 1861/2 we had thirty six inches of rain here in the valley and in the winter of 1880/1 we had ~~Eighteen~~ twenty seven inches in my recollection; and the water in the river was three feet higher at my place than it was in 1862

Mr. Cadwalader. What effect does the raising of the water ~~of the~~ channel have upon the cultivation of the shores of the Sacramento river above Sacramento City?

81 1893

A. Well it caused the water to come up against the levees, and of course the water percolates through the soil, and drowns every thing that is in the soil that will not live in water. The water rises to the top of the land and you can not drive a horse or any thing there. It is as much as a man can do to walk over the land where it has been cultivated when the river is high

Q. What effect does it have upon the planting seasons?

A. Well usually the water is highest just at the planting season. Our high water is usually in the spring here or in the after part of the winter when we would be planting if it were not for the water. Some times it comes after we have planted.

Q. Well how was it before 1862 down there? did you have any trouble in cultivating the

1894 lands by reason of overflows

A. We had no trouble between 1852 and 1862 but what we kept out by an ordinary four foot ditch. We would dig a ditch on the inside and throw the dirt on the outside and that kept all the water out that we had up to 1861

Q. Just go on and state how it was in the matter of raising crops there annually, say down to the time that the river channels commenced filling up.

A. We had no trouble at all between 1852 and 1862 in raising a crop every year

Q. What kind of crops did you raise? A. Well, at that time we raised principally vegetables. Some men about 1853 commenced planting orchards, and up to 1862 we could plant peach trees, cherry trees, and apricot trees — Those are the tender fruit — in places within a reasonable distance of the bank of the river

1895

Q. What was the land best adapted to? A. Fruit is the most profitable crop

Q. What kind of land was it? A. It was black loam, light, warm, strong soil

Q. How did it rank? What class of soil did it belong to

A. Well I do not know that I understand your question. It was very rich

Q. Was it first, second, third, fourth, fifth or sixth class land? A. As to the land, we always called that river land the first class

Q. What kind of land did you have in the tules back of you?

A. The soil was good, but often you got back into the tules it was uncertain about cultivating it. Some years the water come over it. We did not know when the water was coming over it

Q. How productive were those lands down there?

1896 A. They were very productive

Q. Before they were troubled with seepage water?

A Very productive

Q. Well how productive about? what would they rent for per acre a year, or what would they produce?

A The would depend altogether upon the condition they were in, what they would rent for. The would produce ten tons of irish potatoes or sweet potatoes or onions, to the acre, if they were well cultivated. They would produce a large crop of fruit; I do not know that I could give you the pounds or bushels of fruit

Q. Well, in regard to corn or wheat, how? A. I raised fifty bushels of wheat to the acre.

Q. How about corn?

A. Corn grows very well there, but it has never been a profitable crop on account of the worms and birds.

Q. How is that land situated

1897

as to a market.

A. It is within twenty-four hours of the San Francisco market and within two or three hours of the Sacramento market

Q. Have those been the principal markets in the State?

A. They have been our principal markets. San Francisco is considered the principal market of the State

Q. To what extent has that country been planted in orchards, say from Sacramento down to about Walnut Grove on this side? A. It is almost a continual orchard on the bank of the river. Nine tenths of the river front I believe between here and Walnut Grove has been planted in trees. There is not so much of it in trees now.

Q. What kind of fruit?

A. Well, we had a variety of fruit. The were peaches, apricots cherries plums apples

1898

pears, prunes and grapes

Q. What class of fruit was it? A. First Class

Q. What kind of soil was it for melons?

A. Very good

Q. How was it in regard to early productions

A. It was very early, the earliest. We used to have the earliest vegetables and fruit in the market until a little place over here on Putah Creek commenced raising fruit, and they are a little earlier than we are

Q. What effect has this seepage water had upon the time of raising crops there?

A. Well it has ruined a great many orchards and makes crops of vegetables very uncertain

Q. How in regard to the time of raising?

A. The time of the year?

Q. Yes. Can you raise them as early now as you used to

81 1899

A. As early?

Q. Yes. Since you had the seepage?

A. Not when the river is high

Q. I am speaking of the seepage water? A. Well, the seepage only hurts us when the river is up

Q. What? A. The seepage water only hurts the land when the river is high.

Q. What time is the water high there now? What time does it remain higher than the natural soil?

A. That is irregular. That is owing to when the storms come in the mountains. The water remains up a great deal longer than it used to with the same amount of rain

Q. How about the back water in the tules?

A. The back water in the tules is governed by the water in the river

Q. That is, the height of that comes from the water in the river? A. Yes.

1900

Q. Now in regard to the width of the strip of land on both banks of the Sacramento river below here? that is, the cultivable strip. How about the width of it? is it as broad as it used to be?

A. It is not

Q. How much has it diminished?

A. It has diminished more on the west side of the river than it has on the East

Q. How much has it diminished on the west side?

A. I should think it would average one half

Q. One half of what?

A. One half of the amount of land; the distance that they cultivate now from the river back. The width of those places differs a little as you go along, some places are a little wider than others, but the ~~average~~ land that is cultivated on the west side of the river now will not average more than one half

1901

as wide as was cultivated fifteen or twenty years ago

Q. How is it on the East side

A. It has not diminished so much on the East side. They have had better levees and been better protected there

Q. How much of the cultivable land remains on the East side? or what quantity of land has been lost there from that cause

A. I should think perhaps one third

Mr. Catlin On the East side

A. On the East side

Q. For what length on the east side of the river

A. Well the further you go down on this side of the river, the worse it is. The high water has stood up nearer the level down towards Walnut Grove I think and perhaps the damage would be more in the vicinity of Walnut Grove than it has been at my place but the damage extends

1902

of course from the Sacramento River to Walnut Grove.

Q. When did the levee system or the present levee system

A. We have no system in our neighborhood, that is what I mean there is no organization

Q. The levees are all private levees built by private individuals. The levees that we have now were mostly built - well they have all been built since 1862 and the greater portion of them have been built since 1868, since the flood of 1868.

Q. Can you state Mr Johnston how much per acre it has cost on each side of the river for the construction of levees and drains?

A. No Sir there is no way to compute it from the fact that it has been done by voluntary and private work and there has been no system except where there has been a district organized. Where there has been a certain

1903

amount levied per acre you can tell just how much it has cost.

Q. What has generally been the assessment per acre for reclamation purposes?

A. Well I was one of the Commissioners to assess the levy on Grand Island and my recollection is that the assessment there has been about $34.25 thats my recollection ~~an~~ I am not certain about the amount

Q. Per acre?

A. Per acre.

Mr Catlin That is the aggregate amount of all the different assessments?

A. Yes Sir on Grand Island that is my recollection. I have not the figures to show exactly.

Mr Cadwalader What has been the cost on your land for levee purposes from 1861 leveeing and drainage — for leveeing and draining on your land?

A. I have no means to know exactly what it has cost

17 Q. Well has it cost a considerable sum of money?

A. Yes Sir, mine has perhaps cost me $5.00 per acre.

Q. How much land have you got there?

A. In the tract 500 acres.
It has cost more than that—
It has cost more than that for my levee. There are 534 acres in the tract where I am living.

Q. What have you devoted your land to?

A. To fruit and vegetables and grazing, hay and grass.

Q. What have you folks compelled to do there in the way of building mounds to live on?

A. I have been compelled to build mounds or let my cattle drown. I saved my cattle last year by artificial mounds. There was not a foot of ground, of the natural ground that was not covered.

Q. How in regard putting your houses on mounds there?

1905

14 A. The main floor of my house was 12 feet from the natural Ground. I first built a house raised 18 inches high that I lived in dry until the flood of 1862 when the water came into the house then I raised it four feet above what it had been, making it five feet and a half. That kept me dry until I built the New house in 1875 when I put the first floor 10 feet from the ground, that is the main floor of the house.

Q. Why did you do that?

A. To keep up above the water.

Q. How in regard to your barns

A. Those that I have built within the last 10 years are from 8 to 10 feet the main floors where I put my hay and feed above the natural ground

Q. Why did you consider it necessary to put your house up so high and your barns?

A. Because of the overflows of the high water. The water

1906

15 keeps getting higher every year
and I thought I would go
up high enough to keep out
the water.
Q. What have your neighbors
done
A. Most of them have followed
my example, at least most of
them have done the same as
I have done. You would not
have lived in the water last
winter.
Q. How has that country been
built up? What is the nature
of the houses down in your
neighborhood.
A. Well there are some pretty
good improvements down there
Q. Well of what nature give
the Judge some idea. How
do the houses compare with
the city houses here?
A. You mean in quality.
Q. Yes quality and style?
A. Well we have some good
houses there and these good
houses are all built up above
1907 12 feet. None of them I think

16 less than 12 feet from the natural ground and all the houses that have been built years ago, as long back as 1865 are too low and all the good houses which were built then have been raised.

Q. How in regards to the mounds extending from the front door steps down to the top of the levee?

A. Well we all have mounds around our houses and they extend usually ~~up~~ out to the levee.

Q. What is that for?

A. To have a dry place to walk on during the high water, to go out to the river.

1908

Q I understand you to say that before 1862 there was nothing of that kind down there A No sir

Mr Catlin You mean during all that time you had no levees there? this leading question puts you on record for more probably than you are willing to swear to

A I stated that all the levee we had in our neighborhood before 1862 was a four foot ditch, that is a ditch cut about four feet wide and about three feet deep with the earth thrown on the outside, That kept out all the water between 1852 & 1862 ~~there~~ These ditches were made after 1852, and these ditches kept out all of the water between 1852 and 1862

Mr Cadwallader State whether since 1870 if you had such levees your places would have been habitable or cultivable during high

1909

Water? A. They would not
Q. How high is your levee
down there now?
A. My levee is six feet high
Q. On the base
A. It is not regular in the
size, it averages about twenty
four feet
Q Is that a sufficient levee
to protect your place?
A It is not
Q. Why is it not
A. Because the water runs
over it,
Q. The water runs right over
the top of it? A. Yes sir
Q. How deep did it run
over it last winter?
A. It just ran over the top
of the six foot levee, Some
places in my levee there were
not six feet high, it washed
away
Q. How was it above
and below you
A. Above my house my levee
was six feet high and it
1910 Just run over the top of it

but it did not wash the levee away

Q. How was it below, I mean up stream and down stream

A. Up above me on the Whitcomb place the levee was not so high as mine and it washed it entirely away and not only washed the levee away but washed the ground away where it stood on

Q How was it on the other side of the river?

A The same thing occurred on the other side of the river

Q. Was it better or worse on the other side?

A It was worse on the other side. Water was on both sides of the levee. It was higher on the inside right opposite me than it was on the outside. The water that came out of the Sacramento here, and came into it again down there so that the water part of the time was higher on the inside than it was on

1911

the outside, It ran over the
top of the levee
Q. Why was that?
A. Because the river was
not wide enough to hold
water at sacramento and
the levees protecting the city
from the American river and
from the Sacramento river
here, threw the water across
the ~~sacramento~~ river into
Yolo County. and the Mokolumne
river not being high and the
San Joaquin not being high
at the same time — they were
lower than the waters up here,
Consequently the water would
find the lowest place
Q. It would run right
across the sacramento river
A. Yes the water ran right
from here down to Montazuma
hills and there it backed
up at the Montazuma hills,
and stopped the Current
entirely in Steamboat slough
and Consequently filled up the
slough with sand so that

1912

they cannot run steamboats there now

Q. Was Steamboat slough the old river channel

A. No, sir not the old river channel

Q. I dont mean that, was it the steamboat channel for years and years

A. Well, most of the steamboats ran in steamboat slough

Q. Up to what time

A I have forgotten, it seems to me it is about two or three years since the larger boats have quit running in steamboat slough

Q, Did such boats as the Chrysopolis and the Capitol and the senator and the New World go through there

A. They all went by way of steamboat slough, it was the shorter route

Q. There was plenty of water in it? A. Yes sir

Q. How much water was there in it up to the flood of 1862

1913

A I never measured the water
I know all the large craft.
the large boats went by
Steamboat slough
Q. I understand you to say
the levees down there are
Substantially ruined
A. They were, where they
were not high enough to
Keep the water out, wherever
the water ran over them
the water undermined them
and washed the levee entirely
away
Q. How much of an overflow
was there say between Sac-
ramento City and the head
of old river last winter
A. Well, all the ~~winter~~ Natural
land was overflowed, covered
with water
Q. What proportion of the levees -
A. The water on my place
was about six feet deep
Q. On the original bank
A. On the original bank

1914

Q- What was the nature of the overflowers of 62 there?

A- The water was not near so high in 62.

Q- How high was it on the bank A- About three feet

Q- What was the nature of the deposit left in 62 on your land, if any

A- The nature of the deposit that was left in 62 was mostly alluvial soil such as came from the top of the hills in placer mining

Q- Did it do your land any damage

Q- It did not do my land any damage, because there was not enough of it, it any place, but what I could mix it with the natural soil by plowing it

Q- It was all in reach of the plow in plowing it A- Yes, it was on my place

Ap 1915

Q- Noticeably, when has the great damage occurred down there to the river channel and adjoining lands? Within what years or since what years

A- Well the most of it has been done, within five or six years; and more of it done last year than ever was in any year before, I think more than in any two years

Q- What would be the effect of farther raising of the river channel down there

A- Farther damage by overflow.

Q- What effect would it have on the habitation and cultivation of that country?

A- Well a little more raise of the bottom of the river will simply make that country uninhabitable

1916

down there

Q- How as to cultivation

A- It wont be fit for cultivation at all.

Q- Did you describe how the seepage water acted on the land from the base of the levee inwards.

A- No. I do not think that question was asked me.

Q- Well just do it, please

A- Well the seepage water is worse usually near the base of the levee, than it is back a distance from it.

Q- What condition does it leave the land in

A- It kill everything that is in the land that water will kill

Q- Does it leave the land spongy

A- No. It leaves it

1917

when the water goes down, hard, baked.

Q- How in regard to the drainage there. Did you have drains

A- We cut lateral ditches - Yes

Q- From the base of the levee

A- We cut a ditch along the base of the levee on the inside parallel with the levee, and then cut lateral ditches back into the low lands, to carry the water down

Q- At what distance would those be apart?

A- That depends a little on the character of the land

Q- As a general thing, as you go down?

A- ~~I do not~~ There is not any regular custom they ought to be about every 40 rods in order to drain it

1918

Q- How deep are these drains as a general thing?

A- Three or four feet deep

Q- Now in regard to the tule lands advancing towards the levee of late years A- Well the tule on my place has not advanced any, from the fact that I use it, for stock purposes and they keep from advancing. The water has advanced however

Q- The water A- Yes

Q- What are those tule lands used for, by people owning the front land?

A- Most of it for grazing-

Q- Are they valuable for that purpose

A- No.

Q- What are they chiefly valuable for?

A- Well in their

1919

present condition they are not valuable for anything

Q- Have they ever been?

A- Yes, they were, when they were dry. The land is very rich and very productive, and produces fine crops of grain, hay, vegetable or anything. The water has rendered in unproductive, unprofitable and uncertain

Q- What effect have these overflows had upon the roads in this section of the country

A- Washed them away in places

Q- And rendered them impassable in others

A- Yes

Q- Has there always been a road up and down the river? A- Yes

Q- A County road?

A- I do not know that there is a county road, all

1920

the way in the Pocket, But there is a county road on the bank of the river from Freeport down.

Q- How do you get to the County seat generally in high water?

A- In a boat

Mr. Catlin- You mean by the river, by the way of the river

A- Sometimes by the way of the river, and sometimes in small boats by the way of the tule

Mr. Cadwalader Q- Have you noticed since the Sacramento river commenced filling up, the condition of the bottom of the river in high water A- Yes

Q- What have you noticed

A- I have noticed that the bottom of the river in high

1921

water was higher than it was in low water

Q- How do you account for that? A. I account for it by the river being filled up with sand during the first rush of water; and afterwards as the water went down it scoured it that out to a certain extent.

Q- How did you have occasion to ~~notice~~ observe that

A- By being in the river in boats, poling, crossing the river back and forwards.

Q- Did you have a ferry down there

A- I did not. There used to be a ferry right opposite my place; I did not own it

Q- In high water what has seemed to be going on in the bottom of the river in late years

A- I noticed that in putting a pole down, in

5P 1922

poling across the river or in the ~~wale~~ river, I would find the sand or find the bar or bottom a great deal closer to the top of the water than I imagined it was, and could not find any solid place to put a pole to tie a boat to. If I put a pole down there; it would not stay; it seemed to wash away

Q- Why would it not stay?

A- I imagined because it was a body of sand there, which was moving along, and was not stationary.

Q- You could feel it move?

A- I could feel there was something there, that was not stationary

Q- In other words the whole bottom seemed to be in motion A- Yes

Q- How often have you noticed that in the last 10 years?

A. I noticed it about three times, The three last floods we had. It was desirable than it was

1923

In 1868 was the first time that my notice was attracted to it atall and some 2 or 3 time since then. It was more perceptible last year than it was before, that is I examined it more particularly.

Q. How about that stuff going out in low water?

A. It seems to scour out in low water.

Q Do you know what effect comparitively low water has upon that stuff in the bed of the river?

A. I do not know what it has except by inference but I know what it has on the bars.

Q. Well I will ~~to~~ ask you whether you have not had comaritively ~~clean~~ clear water down there since the latter part of May?

A. We have had clearer water this year than we have had for 10 years and bars have washed away this year that

58924

had not been disturbed for five years before. A bar right opposite my place on the opposite side of the river ~~my place~~ and one ~~on~~ my place below my house have each washed away while last year there was a slooping beach that you could walk out on for I should think 100 feet from the natural bank down to the waters edge. This year both of those bars have been washed away until where the water is running to day it is a bluff bank of about 10 feet. It has been washed away.

Q. And that was done by comparitively clear water?

A. It has been done this summer.

Mr Catlin By the clear water did you say?

A. No Sir I did not say clear water.

Mr Cadwallader. There was clear water or comparitively

1925

clear water this summer?
A. I said comparatively clear water. It was done this season during the cessation of Hydraulic mining.
Mr Catlin You say it was during the time the hydraulic mine were not in operation How do you know they were not in operation?
A. By reading it in the newspapers.
Mr Catlin. I object to your stating what you read in the newspapers.
A. Then I will say that it was done during this summer.
Mr Cadwalader Since the last day of May?
A. Yes Since June.
Q. Do you say you have had clearer water down there this year than you have had for 10 years before?
A. Yes Sir.
Q. And since the event of that comparatively clear water, This cutting has occurred?

1926

A. Yes Sir.
Q. The stuff has not of course gone up stream?
A. I think not.
Q. It has gone down?
The Court It will not be necessary to prove such facts.
Mr Cadwalader When did the planting that county with orchard first commence
A. I think the first orchards were planted in 1851.
Q. When did the orchards get noticeably to be productive
A. Well it began to be a business in about 1858 and it kept increasing until about 1862 when there was a cessation for a year or two and then they commenced again and kept on increasing to 1870.
Q. Well how has it been since 1870?
A. The area has increased.
Q. What do you attribute that to?
Mr Catlin Let him go on

and finish his answer?

A. The lands susceptible to raising trees, that trees live upon is less in acres now than it was in 1870

Q. What proportion

A. Perhaps there was as many trees now as there were in 1870 but the land that grew trees in 1870 will not grow them now. There was some land that was capable of producing trees that was not planted then and has been planted on that kind of land and upon the same land that had been planted before.

Q. What effect has the raising of the bed of the Sacramento River that you spoke of had upon the trees and orchards?

A. It has decreased the amount of land capable of bearing trees.

Q. What effect has it had on

1928

the trees?
A. The water kills the trees.
Q. How does the water affect the trees. You have been engaged in that business have you not?
A. Yes sir.
Q. What effect has it had?
A. It kills them.
Q. How, in what manner & when is the damage done to them? A The damage is done in the Spring during high water when the percolation is taking place through the land and the river is up against the levee the water percolates through the soil and raises to the surface on the inside but whenever the orchards are well ditched to carry the water back into the low lands or when the water in the low land is so high that there is no fall to carry the water off, it stands there and ac-

cumulates and kills of all such trees as cherries, apricots peaches etc those tender trees. Pears and grapes will stand more water. Some kinds of plums stand a great deal of water, some of them are delicate but ~~we~~ consider the cherry apricot and peach the most delicate.

Q. I will ask you if it has been an unusual thing to see standing water in this section of the country coming clear up to this country here when peach trees were in bloom?

A. What was the question?

Q. Has it be an unusual thing — has it been an unusual sight?

Mr Cutler. I object to the question as leading.

Mr Cadwalader. Has there been notably in the last 10 years standing water around the trees at the blooming season

1930

A. Well every time we have had a flood but notibly last year.

Q. What effect of the heating of the standing water or a spell of warm weather occurring during the time these overflows have upon the trees? A It kills the trees.

Q. Well. How does it kill them.

A. Well I do not know whether I can explain that satisfactorily or not. I do not know whether I am scientist ~~or not~~ enough. I know it is a fact it kills trees.

Q. Now in regard to having standing water along the margin of these rivers at the time the cherries are ripe?

A. That is frequently the case.

Q. Are cherries gathered in boats?

A. I have never gathered any in boats

Q. Have you seen them gathered

1931

in boat? A. No Sir.

Q. You do not know anything on that subject of your own knowledge?

A. None of my own knowledge. I have taken cherries to market in boats when I could not get them in a wagon.

Q. From Sacramento down say Walnut Grove on both sides of the ~~river~~ river what ~~water~~ was the size of the farms?

A. Usually 160 acres.

Q. Generally after the frontage

A. half a mile.

Q. On both sides?

A. Yes Sir, that is the original ranches. Some of them have been cut up and some of them have been doubled up. Up to 1862 say they were about half a mile on the river.

Mr Cutler Let him state the condition up to 1862

Mr Cadwalader, How was it as to every half mile up to 1862 as to the occupation

and cultivation?

A. Well every half mile was inhabited and cultivated between here and Walnut Grove up to 1862.

Q. Up to 1862? A Yes Sir.

Q. What effect has this rise in this river had upon the value of the property upon the banks of the river?

A. It depreciated it very much.

Q. How much?

A. Well I do not know that I could answer that question exactly

Q. It has depreciated it a good deal. That is what you say?

A. Yes Sir very much.

Cross Examination of William Johnson

Mr Catlin

Q. When you settled there in 1849 were you not up and down the river frequently in boats

A. I did not settle there in 1849

Q. Whenever you settled there

A. I settled there in 1850

Q. In 1850, Were you up and down the Sacramento river in steamers frequently or not

A. Well, I could not say that I was frequently but I was occasionally up and down in steamers

Q. What was the character of the natural growth on the immediate banks of the river

A. The natural growth was sycamore oak buckeye willow Ash and grape vines

Q. Were the banks over hung with willows nearly all the way

1934

down A. There was not as many willows on the banks ~~as~~ then as there are now

Q Were not there a great many willows there

A. Yes sir but more grape vines than willows

Q You say you forded the American river right opposite the fort? A About opposite to the fort.

Q. The fort is about 24th Street is it not? A. I think it is about thirty first street

Q. No Sir A. I dont Know what street it is on

Q. You forded it at sutters fort at the old embarkadero did you not? here is the map and you can see where it is, here is 31st Street and there is the fort. Was not that place Known in early days as sutters Embarkadero? A There were several places on the river but there was no building

1935 where I crossed the river on

this side
Q When you forded how deep was the water?
A. We forded it at low tide. We waited till the tide went down
Q. Answer my question how deep was the water there
A. It was less than knee deep
Q. What year was that in 1850? A. In 1849
Q. Now you say the Sacramento river is ^was^ twenty feet deep at your place. Do you say it was twenty feet deep all the way across? A. There was no perceptible difference
Q. Did you ever measure it all the way across to see whether there was that depth of water all the way across
A. I have gone across when they poled a ferry boat across there
Q. When was that? A That was in 1850
Q. Which side of the river do you now remember was the

1936

deposit deepest on your side or the opposite side

A. Where the ferry was there was no perceptible difference but Just above the ferry there was a very deep place

Q. Was the ferry right at your place? A. Yes sir on my farm but below my house It was not exactly at my house.

Q. I am speaking of the farm

A. Yes sir. It was on my farm. The landing was on my farm

Q. Were there any shoals on the Sacramento river at that time? A Not to my Knowledge

Q. Well do you Know whether there were or not?

A There might have been Shoals in the Sacramento river and me not Know of it

Q You state that the rain fall in 1860 was ~~thirteen~~ 36 inches? A. In 1861 and 2

Q. In the winter of 1861 and 2?

A. Yes sir

1937

Q Aand in 1880 and 81
A. It was twenty seven inches, a little less than twenty seven inches
Q. About twenty seven inches
A Yes sir
Q. Did not the rains during the winter of 1861 and 2 Continue during a much longer period than they did in 1880 and 81? A They commenced earlier
Q. Was not the rain fall during the year of 1861 and 2 distributed over a considerable more time than they were in 1880 and 181
A. I think not
Q. How? A. I think not. The heavy rains were all before the middle of January 1862
Q. Didnt we have a big flood in 1861 and 2? A Yes
Q. One in the early part of december? A one on the ninth of december and one on the ninth of January
1938 Q. Did not the rain fall during

That winter here distribute
itself over a greater length of
time than it did in 188 and 81
A I think not
Q. You think not. You say
that the effect of the floods
of 1861 and 2 was to cover your
land three feet deep?
A. No sir, I did not say that.
I said it covered the bank of
the river
Q. Your lands are on the bank
of the river are they not?
A. Yes sir they are
Q. Then you did say that
in 1861 they covered your land
A. No sir, I said they covered
the bank of the river at my place
I have more land than on the
bank of the river. I have land
that is not on the bank of
the river.
Q. Well it covered some of your
land more than three feet deep?
A Yes sir
Q. How deep did it cover the
lowest of your land in 1861
and 2? A I presume it

1939

was twenty feet deep in ~~some~~ places

Q. Did it leave any portion of your land out of water in the big flood of 1861 and 2

A. No sir

Q. Am I correct or am I not correct in saying that you did state on your direct examination that the big floods of 1861 and 2 did cover your lands three feet deep?

A You are not correct I did not say so

Q. How deep did they cover your land? A. The shallowest place on it was about eighteen inches on my peace

Q. And the deepest were twenty feet? A. Yes sir

Q. And on the bank of the river?

A. Three feet.

Q. Where it was cultivable land some of it was three feet

A. Yes sir

Q. The difference in the overflow of 1881 was that it covered this same land that had been

covered three feet deep in 1862, that it covered six feet deep in 1881? A no sir I did not say that.

Q. Go on and say what you did? A. I said that it was six feet deep on the bank of the river in 1881

Q. And it was three feet deep there in 1862? A yes

The Court that would make it nine feet deep altogether

A. No sir it was three feet deep in 1862 and six feet deep in 1881

Q. Of deposit? A. No sir, water

Mr Cadwallader that is to say the flood of 1881 went some three feet higher than it did in 1862.

A. On the bank of the river where the levees held the water

Q. Did it go in the same proportion further back

A no sir.

Q. It was where the levees held the water on the bank of the ~~rive~~ river

1941 A. The difference on the back

land in 1862 and in 1881
Occurred from the want of the
San Joaquin and Mokolumne
rivers not being up allowing
the waters to flow off, when
it ran over the levee in 1881,
Consequently the back water in
1881 was not so high in pro-
portion to the height of the water
as it was in 1862
Q What was the immediate
cause of its being so ~~hig~~ much
higher in 1881, was the water
held back by levees in any
way, ? A In 1881
Q. Yes sir did the levees
cause the water to be higher
in the river ?
A. No sir it washed the levees
away,
Q. Altogether ? A. No sir not
altogether
Q. Well before the levees were
washed away did the levees
cause the water to be higher
in the sacramento
A. I do not know
Q. You do not know

1962

A. No sir

Q. Now dont you know as a matter of fact that the levees on the river during last winter made the water higher in the river until they were broken and the water ran off?

A. I know as a matter of fact that the water was higher after the levees were broken than it was before.

Q. It raised still higher afterwards.? A. Yes sir

Q. What was the cause of its rising higher?

A. I suppose it was more the fact that there was more rain falling

Q. Was it not because it raised higher in the tule and came into the river from the tules

A No sir the water was higher in the river here at Sacramento

Q Answer my question was it not because the water was higher in the tules than it was in the river and that

1943 it came in from the tules

into the river
A. On which side of the river
Q. Either side?
A. Well the water did not get higher in the tules on my side of the river nor the water did not run into the river
Q. I understood you to say in direct examination that it ran into the river from the west
A. It crossed the River from the west to the east
Q. I am not asking you where it came from! I am asking you whether the water in the river got higher by reason of the water coming out of the tule into the river
A. I do not know what caused it
Q Didn't you in your direct examination state that the water got higher in the tule and that it swept into the river and across the river
A I said that the water was higher to the west and
1944 that it ran from the West

into the river and over the levees

Q

Q And that made the river higher did it not

A. Yes sir

Q

Q Then you are making a distinction between the water coming from the east and from the west, I do not care anything about that, I want to know from you whether the river itself was made higher by the fact that the waters were discharged into the river from the tule basin, either one of them and I do not care which one it was

A. I do not know as I understand the question. It would take more water to make the river higher, scientific men to the contrary notwithstanding. They say that the more water there is in the river the lower it is

Q. Is that what the scientific men say?

A. That is what they say, that the more water you put in the river the more it will carry off without raising the water

Q. Why do they say that?

A. I dont know why

Q. You do not believe that sort of science? A. No sir, I do not

Q. Now repeat the statement that you made on direct examination in the regard to the water coming in to the Sacramento river from the tules?

A. The question was asked if the levees were washed away

Q. I do not care about

9946

the question. Give your statement

A. I want to answer the question as it was asked me. The period was asked me in connection with the washing away of the levees, on the East and west banks of the river. I said that the levees on the West bank were washed worse than the levees on the East bank and I was asked why, because the water was higher on the West bank of the river than it was on the East and it ran over the levees into the river

Q. Then the levees on the West side of the river were washed away to some extent ~~more than~~ by the water coming in from the tules? A. Yes sir

Q. How were they destroyed on the East side of the river?

A. By the water running from the river, overflowing into the tules

Q. Now then how much of the levee was washed away say between Sacramento and the

P 1947

mouth of old river, or Walnut Grove, so many rods or quarter of a mile or miles of levee have been washed away between those points

A. I do not think I can give you any direct answer to that question. There was a good deal of levee washed entirely away. There was more levee damaged. There was very little levee, between here and Walnut Grove but what was damaged by water last winter

Q. How many distinct breaks were there between when the levee was broken through and washed away — washed either into the river or upon the lands — how many distinct breaks were there between here and Walnut Grove last winter? A I do not know

Q. Can you approximate it

A. I know how many there were between here and my place. I was not down

1968

to Walnut Grove

Q. Well, how many between here and your place?

A. There were six

Q. There were six places?

A. Yes sir

Q. What would be their average length?

A. Well I could not give their average length because I did not measure them. One of them was about on the Whitcomb place the whole width of his ranch, the levee was washed entirely away and the water ran over it freely

Q. We do not know what the width of his ranch is. Tell us? A. My recollection is that it is about eighty rods

Q. In one place as much as eighty rods? A. Yes sir

Q. And in other places take the largest?

A. That was the largest — well I do not know the

width of this place just below the City, I think they said it was three hundred feet.

Q. I was not asking you, I thought that you did know?

A. I never measured either of them.

Q. Is it washed away in a great many places below you? A. Yes

Q. In places varying from 100 feet to 500 feet in width? A. Yes sir, there is about a half a mile of the levee at my place that was washed away

Q. Are there any cross levees on the east side of the river — levees running either at right angles or diagonally

A. There is a levee running from Hollister —

Q. Just state whether there are such levees?

A. There is one

Q. Are there not more than one? A. Not that I know of

1950

Q. Is not there the Pierson levee that runs out?

A. That does not run across the tules. It runs across an Elbow of the river, it starts from the river and comes back.

Q. It runs from the bank of the river out across the tules? A. It does go across the tules

Q. Into the tules then?

A. Yes sir

Q. At that point where ~~does~~ it is made, it is made nearly at right angles to the course of the river at that point is it not?

A. Pretty near

Q. You know the Freeport levee? A. Yes sir

Q. Is that above you or below you? A. Above

Q. It is above you?

A. Yes sir

Q. How far above you?

A. Seven miles

Q. Is that the point when

1951

it strikes the river?

A. Where the Freeport levee strikes the river

Q. Is that seven miles above you? A. Yessir

Q. By the river? A Yes sir

Q. How far does the levee extend from the river out towards the high land?

A. A half a mile

Q. What effect has that levee upon the water on your land?

A. That does not extend into the tule. The old railroad track beyond there may affect the water from the City here

Q. No, on you I say — on your land? A. It does not have any effect on me

Q. How does it effect it here in the City? A. Well, I should think it would hold the water from running down

Q. Make the water higher here? A. Yessir, that is if there is a break in the river that would fill up the basin, the natural flow

pp/952

of the water is obstructed

Q. Are there any cross levees on the west side of the river or were there last year and year before? A. There are islands on the west side of the river that are leveed but no cross levees crossing the body of the tules

Q. Well, what I mean by cross levees are levees other than those which stand on the high bank of the river

A. There are

Q. Are there in what is called the Lisbon Swamp land district

A. Yes sir

Q. State where it is situated how far below the City here

A. I do not know the distance by the river but I should think about twelve miles by river to the upper end of the district and about twelve miles by the road to the lower end of it.

Q. What sort of levees are they as to size, are they little small levees or are they large?

A Large

Q. About how high?

A. Well, ten or twelve feet high I should say in the tule

Q. And what banks?

A. Perhaps forty feet

Q. How far do they extend back from the immediate bank of the river into the tules?

A. Well it runs across an elbow of the river

Q. Well, how far do they extend from the Elbow?

A Perhaps, three miles, I am only guessing at that, I do not know the distance.

Q. about how long

A. I should think three miles at the widest point

Q. I will ask you whether the business of raising vegetables is not larger and has not been on the Sacramento river larger within the last ten years than it was before

A. It is not in my neighborhood

1954 Q. It is not in your Neighborhood

but I am speaking of the whole river from your place down to Walnut Grove and in the raising of vegetables I mean the raising of beans, potatoes etcetera.?

A. It is not between my place and Walnut Grove

Q. Is it between your place and the City?

A. It is not on this side of the river

Q. Is it on the other side?

A. I dont Know

Q. Has not the fruit raising been larger within the last ten years than it was before upon this river, taking all the orchards down to Walnut Grove and Grand Island?

A. There may have been more fruit produced from the natural growth of the trees, the trees being larger but there are not so many trees. There are not so many acres

Q. I am not Enquiring upon
1955 that subject, I am asking

whether the product and the business of raising fruit has not increased during the last ten years over and above what it was during the ten years preceding that?

A. I do not think it has increased any.

Q. Is it as large as it was?

A. It is not as large now as it was five years ago

Q. Not as large now as it was five years ago?

A. No, it is not

Q. Five years ago was it not larger than it was prior to 1868? A. Yes sir

Q. How is Grand Island, is not there more fruit raised on Grand Island and on Old River, that is counting both sides of Old River during the last ten years than there was before that time?

A. No sir

Q. Has it not been more than doubled? A It has not

Q. How do you know

A. From observation.

Q. Take the Tallis ranch for

1956

distance - I will ask you whether that ranch has not produced more fruit during the last ten years than it has during the last ten years preceding?

A. Well, ten years preceding that was not one ranch. There was half a dozen ten years preceding that.

Q. Well, the same area of land that now belongs to the Hollis Estate, belonging to the person that was killed?

A. I think up to five years the product on that ranch increased.

Q. Up to within five years?

A Yes sir

Q. It continued to increase

A. Yes sir

Q. Do you say that it has decreased in the last five years?

A. I do.

Q. What was the immediate cause of that decrease - was not that from the breaking of levees there? A. Yes sir - state your question again Judge

1957

Q. The cause of that decrease I ask you whether it was caused by the breaking of Gen'l. Williams' levee there during the last five years?

A. Yessir, it was caused by high water

Q. That has overflowed the lands to some extent?

A Yessir

Q. How wide is this cultivable strip of land, that is this strip of land on the immediate margin of the river, that is out of the water in the planting season, what is its general width before it gets back to the tules, does it vary very much?

A. Yes sir, it does

Q. How narrow does it get to be in some places?

A. In ordinary seasons, forty rods

Q In ordinary seasons, what do you call ordinary seasons?

A. Well, a reasonable amount of rain fall, and no excessive flood,

1958

a very dry year it would be wider and a very wet year it would be less

Q. Prior to the flood of 1862?

A. I am speaking of the narrowest places

Q. Now prior to the big flood of 1861-2, were there any levees constructed down on the Sacramento river to protect these lands? A. Nothing more than a ditch

Q. Well, the levee was constructed by throwing up Earth from the inside or outside?

A. Inside, cutting the ditch on the inside and throwing the Earth on the outside, though there were some that did the other way

Q. Some dug their ditch on the outside? A. Yes sir

Q. Well these ditches on the outside were only dug for the purpose of getting the dirt to construct the levee?

A. Yes sir

1959 Q. And that was the same

on the inside, the ditch was constructed to get the dirt to build the levee with?

A. The construction of a ditch on the inside answered a double purpose—

Q. How high was that levee usually when it was constructed in that way, prior to the big flood of 1862, what was the general size of those levees?

A. That would make a levee about two feet or two feet and a half high

Q. Why was that levee constructed then, you had not had any floods? A Yes sir we had

Q. You had had a flood before 1862? A. Yes sir

Q. That overflowed these cultivable lands? A Yes sir

Q. These levees were constructed to protect them were they not?

A. Yes sir

Q. Did you not also prior to 1862, cut lateral ditches?

A No sir

1960 Q. Never cut any lateral

ditches before that? A No sir

Q. You did not, but did not others? A. Not that I know of

Q. You do not swear that others did not? A. No sir

Q. You are only talking about yourself? A Yes sir

Q. On your land has the cultivable area been reduced in extent? A. Yes sir

Q. How wide is this strip of tule land back of your land? A. About a half a mile from the river bank

Q. How wide is it?

A. I say it runs about a half a mile back

Q. On the river bank?

A. Yes sir

Q. You say it is about a half mile wide and comes up pretty close to the river bank? A. Yes sir

Q. You have got 534 acres of land? A. Yes sir

Q. How much of that 534 acres of land is what you call

1961

plow land, I am taking it as it was now prior to 1862

Q. How much of the tule land?

A. The tule prior to 1862 in ordinary seasons, we could cultivate four fifths of it, we could have cultivated it but we did not do it

Q. Did you do it? A No sir

Q. I was asking you how much of your land, what proportion of this 534 acres was tule land devoted to pasturage?

A Well, that has been different in different years. During some years we cultivate a great deal more of it than we do others and formerly a great deal more than we do latterly

Q. Well now the answer to my question. You have got 534 acres of land?

A Yes sir

Q. How much is that plow

1962 land for ordinary purposes

of agriculture such as raising vegetables and fruit trees?

A. Last year I cultivated about 100 acres, all the land that I cared get in, in season

Q. I will ask you prior to 1862 how much of this was plow land?

A. I did not own that much land prior to 1862

Q. You did not own it prior to 1862? A. Not all of it, no sir, I only owned 160 acres then in 1862

Q. But you can answer without your ownership, how much of this land prior to that time was plow land for ordinary purposes of agriculture such as raising fruit trees and vegetables?

A. About 3/4 of it

Q. About 3/4 of 534 acres?

A. Well, yes, I did not own 534 acres

Q. I know that but was it even cultivated?

A Yes sir

Q. What to?

A. Barley, wheat, corn, potatoes onions and fruit trees

Q. What year was 3/4 of that land cultivated in that way? A. In 1854. 1855. 1856 and 1859

Q. Was it overflowed during those years? A. Not to any extent. We always have a little water back there in the tules more in the spring any year than there is in the fall. In 1864 it was nearly all cultivated

Q. 1864 was a dry year was it not? A. Yes sir

Q. How much was the rain fall in the winter of 1863/4

A. My recollection is about eight inches, a very small rain fall I know

Q. That is generally known as the dry year?

A. Yes sir one of the dry years

1964 Q. The dryest of the dry?

A. I do not know whether it was dryer than 1871 or not, I think 1871 perhaps was as dry as 1864. 1854 was also a dry year

Q. Did I understand you to say that nine tenths of the land between here and Walnut Grove was ever in orchards

A. No sir

Q. What was it you did say on that subject. I thought I understood you to say so — that nine tenths of the banks of the river from here to the mouth were in orchards?

A. Yes sir

Q. Did you say that?

A. Yes sir

Q. How many acres did you have in orchards?

A. At what time

Q. Well, any time the highest number that you ever had in an orchard?

A. I believe I had 30 acres in orchard and grape vine

Q. How many?

1965

A. I think 34 acres

Q. How much of it was orchard? A. About 30 acres

Q. Can you state with any degree of accuracy how many acres there was in orchards all the way from Sacramento to Walnut Grove? A. No sir

Q. You do not know enough about it to be able to approximate the number of acres?

A. I presume what we call tree land from Freeport to Walnut Grove

Q. I am not talking about tree land I am talking about orchards. I will ask you now perhaps to aid your recollection are you not among the largest of the orchardists upon the river? A. No sir

Q. Are you not among the largest? A. Well, perhaps I am among the largest

Q. My question is are you not among the largest?

A. Perhaps I might be counted in that number but I do

1966

not know what number that coined take in

Q. Who is the largest on the river? A. I believe Sol. Runyon

Q. How many acres has he in orchard? A. I dont know

Q. He is on old river is he not

A. He is on old river, and Georgiana slough both

Q. How many acres had Reuben Kirchevel on the head of Grand Island?

A. Well if you will allow me to explain the acres of fruit land on a mans ranch is counted by the number of rods his front has. I think Kirchevol had all his front, his fruit land in

Q I am asking you how many acres he had in orchard? A. I dont know

Q. Do you know how many acres the Hollis Estate had?

A. No sir, I do not

Q. Do you know how many acres Hollister had?

A. No sir

1967

Q. Cant you tell pretty near how much Hollister had? he lives near you dont he?

A. Yes sir

Q. How near? A. Two miles and a half

Q. You have often been on his place? A. Oh yes sir

Q. How many acres had he in orchard? A. Well, I should think he has from forty to fifty acres — forty perhaps — I will say forty

Q. Now you have named Hollister and you have named Sol. Runyon, name some other among the large class of orchardists?

A. Mr. Ralston

Q. How many acres has he in orchards?

A He has about twenty, I am only guessing at these acres, Judge, I do not know

Q. I know, but there has been a good deal of guess work here. I will ask you again on the subject of tree land

1968

Can you tell me with any accuracy or approximate accuracy how many acres of that kind of land there is on the East bank of the river, between I. Street and this city and Walnut Grove?

A. In my neighborhood it would average fifteen rods or thirty acres to the mile

Q. Can you approximate as to the number of acres of that kind of land there are between this City and Walnut Grove? A. If you tell me how many miles it is, I will

Q. I want to know?

A. I dont know how many miles it is

Q. Then you can not give anything like an accurate statement as to the number of acres of land capable of producing fruit trees? A. No sir. I can give you how many acres there is to the mile

Q. Are you acquainted much

on Grand Island? A Yes sir

Q. Was not that whole island nearly a piece of wet swamp land prior to the construction of the levees there?

A. No sir

Q. It is nice high, dry land

A. The head of the island was nice

Q. The head of the island was dry? A. Yes sir

Q. That is where Kercheval lives? A. Yes sir

Q. I was talking about the whole island, whether that island was not a low wet swampy piece of ground?

A. Well, I said no

Q. Do you know whether it was bought of the State as swamp land or not?

A. Some of it was

Q. Was it not all?

A. No sir

Q. Dont you know that every foot of the title comes from the State?

A. I do not. I know that

1930

residents on the island have patents from the Government and have refused to pay their taxes because it was Government land. Being one of the Commissioners there I have had something to do with it

Q. That is right at the head of the island where Kercheval lives? A. Near the head of the island. Kercheval is not one of the parties

Q. Near there? A Yes sir

Q. How is your title to your land _ swamp land title?

A. Well, the Government claimed a part of my land

Q. Do you get your title from the State? A. The State has sold it all to me and the Government has sold a part of it to me and the State has sold all of it

Q You have got a swamp land ~~title~~ title to all of it?

A. Yes sir

Q. You claim it under a swamp land ~~title~~ title? A. Yes sir

1971

Q. Is not your place there more eligibly situated with regard to cultivable area than most of the other land up and down? A. No sir

Q. When did you purchase that land? A. 1850

Q. Was it all settled up then when you settled there?

A. Yes sir

Q. Settled all the way up and down the river in 1850

A. All between here and there, yes sir. Between here and Steamboat Slough

Q. All between here and Steamboat Slough? A. Yes sir

Q. What was the character of the agriculture that was carried on there at that time?

A. It was exclusively vegetables, onions, potatoes and melons

Q. Well was not that confined to a very narrow strip of land on the river?

A. Yes sir

1972 Q. I will ask you whether

Subsequently to 1870 or during the first five years after 1870 was there not more vegetables produced and shipped to market on that river than there was prior to that time?

A. No sir, not in my neighborhood

Q. Well how was it other neighborhoods? A. Well, there may have been other places, newer places perhaps that there was more vegetables raised after 1870 than before, but in my neighborhood the business of raising vegetables was pretty much abandoned after that time

Q. You went more into fruit raising? A Yes sir

Q. You changed from vegetable raising to fruit raising?

A. Well, we changed before that time

Q. You changed largely after that time didn't you?

A. No sir, I do not think we have changed

1973

Q. Didn't that change occur with you — didn't you go more into fruit raising after 1870? A. Yes sir, more after 1870 than before

Q. Didn't it with your neighbors also? A. I think not. I was among the late ones that commenced the fruit business there. I had been in the stock business and had not paid as much attention to fruit as my neighbors had

Q. You say the Grand Island was not a wet swamp. Describe what sort of a place it was?

A. The head of the Island on both sides, on old river and on Steamboat Slough compared very favorably with the bank land on the main river up where I lived. The banks were as high and were dry at an early day as they were up there and have remained so

Q. What is the head of the island now about the middle of the island?

A. Well, as you go down the island the height of the land decreases and at the lower end of the island it is almost all tule, that is it was most all tule before the levees were built and it is now because the levees have been washed away, but in the mean time after they leveed Grand Island was a grand wheat field

Q. You say the water in the Sacramento river was clearer than it had been for many years before, a part of this year?

A. Yes sir a part of this summer.

Q. During the low water?

A Yes sir

Q. You were asked to explain what the cause of that was Now do you know any thing about the reasons why that water was clearer of your own knowledge? A No sir

1975

Q. You say it had the effect to carry away or there has been carried away during this summer, certain bars in the river near your place?

A. Yes sir.

Q. You attribute that to the fact that the water was clearer ~~than at any other time~~?

~~A. Yes sir~~ that the bars had been cut away?

A. I do.

Q. Were they not cut away by the action of the current

A Yes sir

Q. Was the current any swifter this summer than it usually is in low water?

A. No sir, I do not know that it was

Q. While the water was clearer was it not very highly colored still?

A. Yes sir, it was colored

Q. Didn't it carry a good deal of fine sediment?

A. It carried some

1976 Q. Didn't it perceptibly carry

fine sediment all during this summer? A. Yes sir

Q. Now then just explain why these bars were cut away last summer by reason of the water being a little clearer than it was some summer before? A. Well, I am not a scientific gentleman. I know the fact is so and that is all I know about it

Q. You know the fact that the water was a little clearer this summer and that this summer these bars had been worked off? A. Yes sir

Q. And left a bank there ten feet high? A. Yes sir

Q. Which bank do you speak of, a natural bank?

A. The bank of sand, the bar

Q. You said that it cut down so as to leave a bank ten feet high, what bank ten feet high?

A. Well, the bank of the bar. Here was a beach running off in an elbow of the river

EP 1977

and it cut away that beach until it was ten feet above the water, a perpendicular bank.

Q. Sand? A. A sand bank.

Q. You say at high water periods — you were asked how you usually came to the County seat and you said sometimes in those periods you came by water, sometimes by river and sometimes by the tule? A. Yes sir.

Q. Could you come in a boat all the way from your place to the city through the tules — you have done so I understand you?

A. I have done so — yes.

Q. That was when the tules were pretty full?

A. That we could only do when there was a break in the river some place. We could do that always when there was a break in the American or Sacramento river here in the City because

1978

that made a basin all the way for the water. We could only come all the way up when there was some break

Q. When the tules on the East side were filled up?

A. Yes sir

Q. Does not the strip of cultivable land as it is called on the immediate bank of the river suffer from high water in the tules flowing up over?

A. Yes sir

Q. Does not the tule water sipe in there as well as the ~~tule~~ river water?

A. No sir, the tule water does not sipe in

Q. Why not?

A. Because the water is as high in the land as it is in the tule and there is nothing to prevent it flowing over the land and consequently there is no sipage

Q. How is that? A. There is nothing to prevent the tule water from flowing right over the land as high as the surface water is.

Q. Well then don't that seipe as it is termed - that is, percolate - this is sandy loam, from the tule as well as from the river

A. No sir

Q. Why not? A. Because the water covers the land as high as the water rises in the river. There is nothing to prevent it ~~the per~~. The percolation only occurs where there ~~is~~ is something to prevent the flow of the water as for instance to come against the levee

Q. It rises as high in the tules as it does in the river, I understand you? A. No sir I did not say so. I said it raised as high on the land as the water is in the tule there being no levee to prevent it

Q What water is it that rises as high on the land as

1980

it does in the river - what water is it? - the tule water.

A. I did not say the water raised as high on the land as it did in the river?

Q. What did you say? A. I said the water raised as high on the land as it was in the tule

Q. Now, then don't that water percolate through that soil?

A. Well I do not understand that water percolates except where it is obstructed by something, when there is a lower place in the land ~~for~~ it to percolate to. When there is no obstruction it simply flows over the land

Q. When water from the tules comes within 40 rods of the bank of the river, and covers the land, will not that water percolate this sandy loam clear up to the river bank?

A. No sir

Q. Why not? A. Because water won't run up hill

Q. Well won't it percolate under the surface.

1981

A. It will rise to the surface of the tule, but the surface of the land is higher than the surface of the water

Q. You say that three times since the flood of 1861 you have been out in the river and gobbled it during high water, and you could perceive, that there was moving mud in the river?

A. Yes sir

Q. One was 1868? When were the other 2 years?

A. Well 1881 was one — 1868 and 1881, I forget which the other year was. It was one of those flood years

Q. The roads that you speak of being washed away are roads running on the bank of a river, and while the river breaks through these different places it washes the roads. A. Yes sir

Q. Don't those washes carry a good deal of the material of which the levee was constructed, right on to the lands? A. yes sir

#

1982

Testimony
of
J. McUpham

Called for Plaintiff. Sworn

Mr Cadwalader. Where do you reside? A. Emmaton, Sherman Island

Q. How long have you resided there? A. I have resided at Emmaton since 1871

Q. How long have you resided on Sherman Island

A. I have resided there since 1864.

Q. When did you first go in to that section of the country?

A. In the winter of 1862, or in the Spring of 1862

Q. Does the Sacramento River sweep along the west shore of Sherman Island.

A. Yes sir.

Q How far is Sherman Island below Rio Vista? A. It is about three miles and a quarter

Q. How long is that Island?

A. It is 12 miles by the river

1983

Q. That is it fronts 12 miles on the Sacramento? A. Yes sir

Q. Are you familiar with the river in front of that island, have you been familiar with the levees in front of that Island since 1862.?

A. Yes sir, pretty much

Q. The Sacramento River?

A. Yes sir

Q. Have you not been a large land owner on that island

A. Quite extensive.

Q. Have you been one of the Trustees of the district?

A. Most of the time since 1868

Q. What changes have occurred in the channel of the Sacramento River abreast of that ~~I~~ island since 1862, when you first went there?

A. At the northern part of the island there has been a large bar made out from the western shore. When I went there at low water it had the appearance of being

1984

perhaps an acre in size, and it now probably is 250 acres There has been 170 acres located there of pretty high land since that time

Q. In the bed of the Sacramento River? A. Yes sir in the bed of the Sacramento River At low water it shows itself a short distance from the western bank and by gradual acretions it has formed to an immense body. That has filled up the point and turned the current

Q. What is that land composed of? A principally sand.

Q. Where did the sand come from? A. Down the river

Q. Down the Sacramento River? A. Yes sir

Q. If the channel of the stream of the Sacramento has narrowed since 1862, state the extent of the narrowing?

1985 A. I should judge that the

channel of the river has narrowed about one-third

Q. What width? A. It varies the width of the channel at present perhaps from 220 to 300 feet.

Q. What has caused the narrowing of the channel?

A. The accumulation of material

Q. On the bottom? A. On the bottom and sides. The bottom has filled up I should judge from 6 to 10 feet

Q. What is that material?

A. It is sand and what we term down there sediment though principally sand. In the lower depths it ~~appears to be sand~~ seems to be some ~~it~~ some sediment

Q. How much has the fill been there in the channel since 1862? A. In the whole scope of the channel I should judge it has been about one-third

Q. That is narrowing the channel, but how much has

1986

the bed of the river been raised there? A From 6 to 10 feet

Q. How much of the discharging capacity of the river if at all has been destroyed by this deposit of sand and sediment?

A. Since 1862 I should think it is. Since 1861 and '62 I should judge that fully one-half of the capacity had been destroyed

Q. When has the principal part of it occurred?

A. More noticeably since 1868

Q. Has it been growing or decreasing since 1868?

A. It has been decreasing each year since 1868. We have during extreme low water at times when the water is most clear it seems to exercise the scouring function; that is generally about low water

Q Do you notice the changes since 1868 in the condition of the water coming down the river?

A. During the first storms in the fall of the year or whenever they occur, sometimes not until the latter part of December, the water is very much charged with debris.

Q. How heavily charged with it on those occasions?

A. The percentage I am not able to give you, but more seriously at those times than at most other times. I do not know that the quantity of water has any particular effect upon the amount of debris, perhaps, that is, any great effect. I do not think that the quantity of water flowing has a very material effect on the amount of debris that it carries for I notice that since the early part of the Summer that when the water still remained very high the water was comparatively clear, and seemed at that time to exercise considerable

1988

of a scouring effect

Q. What effect has this water being so heavily charged with sedimentary matter had upon the current of the stream

A. It has a tendency to render it more sluggish and decrease its velocity

Q. Do you notice it?

A. I notice it very visibly in pulling a boat, more especially in 1862, and during our other freshets and high water periods, it was much more apparent in pulling a boat than what it has been in the last 5 or 6 years, against the current

Q. The river is gradually losing its velocity?

A. I think that the more debris there is in the water, the current in proportion to the height of the water is less, and it is gradually growing so, and loseing

1989 its velocity

2. What effect does the filling in of the river bed have on the cultivation of Sherman Island?

A. From 1863 to 1866 I think there was very little levee built on Sherman Island there was no constructive construction, and after the spring freshet was down they used to put in a good deal of vegetables there on the banks with a small levee thrown up perhaps a foot, may be a foot and a half high, and cultivated them in considerably large tracts sometimes quite a number of acres very successfully. The filling up of the water has gradually raised it a foot and a half or 2 feet. The result is in 1868, they built upon the lands what they considered to be a good, fair substantial levee, not against 1861 or

1990

1862, but any and every other year, but the raising of the water continually gaining on their banks, they made other additions to the levee. They calculated that in 1871 it would be equal to the 1861 and '62 flood. It was built up higher somewhat than the 1861 and '62 flood. The waters of 1877 and 1878 broke through the embankment, broke through the levees

Q. And went over the embankment? A. And went over the embankment

Q. Have you been able to protect that island by levees?

A. We have not succeeded yet. We did for several years get along very well with small levees but of late years it would seem as though we have not been able to raise the bank — or the embankment as fast as the river raises

Q. How much per acre have you expended there for levees?

1991

A. Probably thirty-five dollars.
Q. Thirty-five dollars per acre?
A. Yes.
Q. Since 1862? A. Yes
Q. That is of your own knowledge? A. Yes.
Q. What do you say the general result is?
A. We have been under water for the last four or five years.
Q. At the planting season?
A. Yes.
Q. What kind of improvements were on that island say up to 1862-3-4? A. There were two or three shanties there. I say two or three shanties — In 1864 there probably were forty or fifty, I do not know perhaps thirty shanties and you might say ~~there~~ were a few very good buildings.
Q. And people living there?
A. Yes.
Q. And cultivating the soil?
A. Yes
Q. What was the capacity of the soil, agriculturally?

1992

A. It was very fruitful indeed

Q. Well, how productive?

A. With wheats, the production depended a great deal upon the system of cultivation. There were a great many people who had no knowledge of cultivating tule land, and they made very unsuccessful attempts. There were others who had had a little more experience and they were very successful. For instance in two fields lying along together and cultivated by two farmers, one would raise from thirty to sixty bushels of wheat while the other would not produce perhaps twenty-five or thirty

Q. Has the land become impaired by the overflows caused by the raise in the bed of the river?

Mr. Catlin. Name the time

Mr. Cadwalader. Well, take 1862 when you first went there?

A. In 1862, there was no cultivation on the island. If there was it was perhaps on half a

1993

dozen acres

Q. When did the cultivation on the island first commence?

A. The cultivation on the island commenced in 1856 I think.

Q. When did you raise your largest crops? A. We raised our largest crops in 1877. Our land was all in cultivation at that time and it was after we had constructed our heavy levees.

Q. You say the land is now all under water? A. Yes.

Q. How much land is now under water that had been formerly cultivated to your knowledge?

A. You speak of Sherman Island, or generally?

Q. Sherman Island.

A. Well, it is all under water. There are 14.000 acres in the island and the 14.000 acres have been cultivated

Q. How many thousand acres you say have been cultivated?

A. 14.000.

Q. Of that how much is under water this year at the planting

1994

season? A. 14.000.—

Q. How was it last year at the planting season?

A. The same

Q. How was it the year before?

A. The year before there had been an attempt to repair the levee after the spring rise of water consequently there was a margin drained down, but there were very few acres cultivated

Q. ~~Does~~ Was this 14.000 acres, the land upon which you had paid the assessment of thirty-five dollars per acres? A. Yes.

Q. Have you a town down there?

A. No sir, we have a settlement

Q. Have you a School-house

A. School-house and store we have had

Q. Churches?

A. Itinerant, somewhat in their nature

Q. I mean Church Edifices?

A. No sir

1945 Q. How do they stand in relation

to the water on the island?

Mr. Catlin. The Churches do not stand there

Mr. Cadwalader. I did not say Churches, I mean School houses and buildings

A. A very large portion of the buildings have been destroyed. The School house was swept away some distance but it was brought back and replaced. A large percentage of the buildings have been destroyed and the fences are all swept away

Q. What will be the effect on that island of further raises in the channel of the Sacramento River and of the bed of the river?

A. I do not think it will produce any appreciable effect from its present condition. I do not think it will ever be resurrected?

Q. It is about as bad as it can be? A. The water stands upon it now, and I
1996 do not think it can ever be

reclaimed. These breaks have never been repaired. Understand me I do not think that land could ever be reclaimed

Q. Water now stands on these 14.000. acres the whole year?

A. We have a tide there of about five feet, so that through the breaks the tide ebbs and flows

Q. Does that uncovers the land? A. Part of the day it uncovers the banks outside of the levee but it is impossible for the drainage to be complete from the inside and of the bank inside of the levee. The escape is not great enough

Q So the tides do not relieve these 14000. acres of land that were formerly cultivated from the standing water?

A. The tides can not relieve it now. It used to at one time.

Q. Does the water stand there the whole year round now?

1997

A. It stands there all the year, yes.

Q. What is the cause of that in your opinion?

A. Formerly we used to succeed very well in draining our lands with the tide. At the time the tide went down we turned run off any surplus water we might have that had accumulated on the inside but that has been gradually changed until now, I think there is a difference of about a foot and a half — I think the tide lacks about a foot and a half of going down as it did at an earlier period. Consequently we lose the drainage. We have lost it, and the effect of the water running a foot and a half or two feet higher than the general average of the flow fills up our land and the two destroys our drainage.

Q. What is the rise in the bed
1998 of the Sacramento?

A. Yes, it destroys our drainage

Q. Now, in regard to the cost of protecting that land, as compared to what the cost would have been ten years ago?

A. From what knowledge I can gain from people who resided there, and who reside upon the river generally — I inquired more especially for stock raising purposes to prepare the lands for stock, and they told me then that if I should construct —

Mr. Catlin <Int'g> I object to the witness making these statements

A. I will say to counsel that this was an investigation that I made for the purpose of informing myself how high to construct my embankment

Mr. Catlin. I understand that but I object to it. It is hearsay testimony

Mr. Cadwalader. I suppose the witness may state what investigation he made

1999 The Court. But he need not

State what others told him

A. Your question carries me back ten years if I understand you, and that would be 1871.

Mr. Cadwalader What would be the difference in the cost of protecting that land from the water from the Sacramento River now as compared with what it would have been when you first went there in 1862

A. After the high water of 1862, I think that a reclamation of ten dollars an acre would have reclaimed the land.

Q. Ten dollars an acre?

A. From any water except 1861-2 that we had had

Q. Well, what would it be now to achieve the same results that you expected to achieve in 1862 by the expenditure of ten dollars per acre?

A. I think it would cost fully three times that amount and perhaps four — fully three times that amount.

Q. Would it not be more than

2000

that, and have you not spent more than three times that amount? A. Admitted. We have spent a good deal of money in repairing places that had been washed away. The cost of reclamation excludes that if I understand your question, but if we were to start in anew again that would obviate of course the replacing of dirt that had been washed away. It would cost us a great deal to repair the breaks that had occurred —

Q. (Int'g) What were those breaks caused by?

A. What we think caused those breaks is the general elevation of the river — its filling in with debris, the narrowing of its channel, the raising its bed, the filling up and shoaling of the river

Q. Have you ever had any water on that island or trouble that did not come from the Sacramento?

2001

A. The overflow from the Sacramento over the island generally runs into the San Joaquin over our San Joaquin levees over the tops of them. For instance we have a very extensive break on the Sacramento shore, it is liable to run over all along the line of the San Joaquin

Q. And break the levees on that shore? A. Yes, open them there

Q. Are you familiar with any of the other islands in the Sacramento river besides Sherman? A. No, not especially so. Of course I have been over them a great deal

Q. What Islands are there? A. Well, Grand Island, Brannan Island Andrus Island.

Q. What is the nature of the soil of Sherman Island these 14000 acres? A. Principally peat that is a decayed vegetable matter

2002 Q. Have you had any deposits

made upon it by the Sacramento river? A. Very lightly. The surface water that comes on us is not so heavily charged with debris and that in passing over the banks it causes much of a deposit. At some places where there is a current, we have a light deposit.

Cross-Examination of J. M. Upham

Mr. Catlin Mr. Upham you have stated on your direct Examination what you and your neighbors generally thought in regard to the way these levees were broken. You think that the levees were broken from this, or that, or the other cause. I will ask you if it is not a common impression among your neighbors that Sherman Island is to some extent what is called a floating island?

1003

A. No sir, I never heard such an expression that is from people who live there. I have never heard that expression from any one who ever lived there

Q. Well, from anybody who did not live there?

A. I know there are a great many people who have ^general^ an idea that swamp lands will float

Q. I say Sherman Island?

A. I say none that ever lived there

Q. I say is it not a current idea among people there that Sherman Island is to some extent a floating island?

A. What do you mean by "there"

Q. You say you have heard that idea advanced there.

A. I did not say I had heard that idea advanced there

Q. Has it not been ascertained that the soil of the island does not go clean down to the hard soil at any point but that it come in contact with

2004

water beneath it, so that in a measure it is a floating island? A. I have never known of any thing of that kind being ascertained. I will state a proposition and that is this: That in some places, four four or five acres the land to a certain depth rises up with the floods. Perhaps out of the 4000 acres on Sherman Island there might be twenty five acres of that character of land that rises and falls with the floods to some extent. That is caused by the water

Q. Caused in what way?

A. By the rising and falling

Q. You do not think that is the case with the whole island?

A. No sir, I know to the contrary

Q. How many acres do you say float in that way?

A. May be twenty five.

Q. Whereabouts in the island is that?

A. It is situated in different parts over on the San Joaquin side of the island

Q. Those are parts where the indications are perceptible of the rising? A. That is all that I know anything about

Q. Do you believe that Grand Island can be reclaimed at all, or ever could be reclaimed at all so as to be permanently cultivated? A. Do you ask me about Grand Island?

Q. I mean Sherman Island.

A. Yes I do

Q. You say in 1868 they built a levee which they considered would be strong enough against the ordinary floods but not strong enough to withstand a flood like that of 1862?

A. I think if I said 1868 I changed it to 1868-9 or 1869

Q. I am not particular about the year — They did build a levee somewhere about 1868 or 1869

A. Yes

2006

Q. At a cost of how much per acre? A. At that time?

Q. Yes. Up to that time inclusive of the building of the levee, which you say was deemed by the people there strong enough to withstand any flood except the one that occurred in 1861-2, how much had been expended per acre, including the previous levees and that one? I am not particular to your being accurate to a single dollar.

A. Well, there were quite a number of assessments levied there and I can not well get to that. I might get three or four dollars out of the way unless I should stop to figure it up.

Q. How many assessments were levied prior to and inclusive of the assessment that was levied to construct the levee of 1868 or 1869?

A. That is what I was trying to reckon up.

Q Three assessments, or

2007

four assessments or five or six? A. That was our first assessment - by the way - $4.80 per acre

Q. That was the first assessment? A Yes.

Q. You state that you think a levee could have been constructed with a ten dollar per acre assessment sufficient to protect the lands except against a flood like that of 1862?

Mr. Cadwalader. No sir.

Mr. Catlin That is what I understood you to say

A. I said "yes". The question was what it would have cost that "what would be the apparent additional cost to construct a levee now and what it would have been to construct it at that time. I remarked that a ten dollar per acre levy I would consider to be a permanent structure against any thing with the exception of the 1861-2 flood

2008 Q. Now would it be a prudent

and a safe system of agriculture there to lay out money in the construction of a levee around that island which would be understood and acknowledged to be insufficient to withstand a flood like that of 1862?

A. No. I think it was a practical business question to do so

Q. When they built the levee in 1868-9 they expected that if they should have a flood like that which had occurred five years before that it would be swept away?

A. No sir, they had satisfactory evidence to the contrary, that the water of 1861-2 probably would not injure their levee

Q. You say that it was not expected that it would withstand another flood like that of 1861-2

A. You understood it by that, that that would washes over the embankment. The material of which that levee was originally constructed was a decomposed

2009

material that was not subject to wash

Q. How? A. It was not subject to being washed. That material was not subject to being washed and the mere effect of the water coming over it at a certain hight would not be damaging

Q. If the water went over the levee it would fill up the island? A. Yes, undoubtedly

Q. It would destroy you agriculture? A. It would hurt it for that year

Q. In other words, you built a levee in 1868 of a better material, of a material which you thought would not wash away even though the water got enough higher up to run over the top of it?

A. The material we were compelled to use was of that character that would not wash.

Q. It has washed away since when the water went over it in many places has it not?

2010 A. As I said before at a

Clitam Elevation —

Q (Intg) Answer my question first

A. I do not think that levee has ever washed, sir.

Q It has not washed?

A. Some of it has remained there

Q. How was it broken?

A. The pressure of the water broke it away

Q. The water pressed against it so hard, that it broke it and washed it away did it not?

A. Yes. Mind you I said this that the levee I spoke of as being broken was the originally constructed levee. I attempted to explain but you would not allow me to

Q. Your first testimony about building a levee was about building this levee? A. Yes

Q. Had there been levees built other than that?

A. None consecutively. There had been detached parts constructed

2011 Q. What were they constructed

out of? A. Out of the same sort of material — the bank formations

Q. Were they constructed by private enterprise or by assessment?

A. By private enterprise

Q. Or assessments?

A. Without any organization. We did not organize until 1868

Q. Now you state that they speaking of you and your neighbors thought the levees were broken because of the raising of the bed of the river. The levees were all broken in that vicinity around there where there were levees in 1862 were they not

A. I do not know that there were much of any levees. If there were they were something thrown up a foot or a foot and a half or something of that kind

Q. Were there not levees on Grand Island? A. No sir, except at its upper end. Generally there were no levees on Grand Island.

Q. The water was higher there in 1862 than it ever has been since, was it not?

A. There was not a great deal of difference at Emmaton in 1862 from last year, not over a foot probably

Q. Then it was higher in 1862 than it was last year by a foot?

A. Yes

Q. That is all I wanted. There need not be any reluctance in stating a well known fact. That raise was not caused by the filling in of the bed of the river, was it?

A. In 1861-2?

Q. Yes. A. As I stated I first went on there that year.

Q. Answer my question and explain afterward?

A. I can not answer your question

Q. I thought you said you came there in 1862. Did not you go there in 1862? A. Yes. But I could not give you any evidence as to the condition of

2013

the river previous to 1862

Q. Where did you come from

A. From Solano County

Q. Had you not some general acquaintance with the river prior to that time?

A. I had travelled on the steamboats up and down the river but there was nothing to familiarize me with its condition

Q. From such knowledge as you had can you state whether the high water down there in 1862 was caused by the filling of the bed of the river, or not?

A. I have no general knowledge. I should suppose it was caused from these rain storms, the heavy rain storms of 1861-2

Q. Are not the heavy rain storms the general cause of all these floods?

A. As I told you before, I had no knowledge of the river and I could not answer the question

2014 Q. Was the island overflowed

in 1875-6? A. I think not

Q. Was it in 1874-5

A. My impression is that it was not. We might have had some breaks in those years that admitted the water for one or two days.

Q. Some breaks? A. We might have had some breaks.

Q. That admitted water on the island for one or two days?

A. Yes, they were closed up and the water was immediately drawn away by the ——

Q. <Int'g> That water that was admitted for one or two days flowed over the island?

A. No sir, only a portion of it

Q. But the breaks were closed up in time to prevent the covering of the whole island were they? A Yes. I say if the water came in in those seasons it might have been through some of those breaks. We had no general overflow. We might have had some little break that caused the water to

R015

Come in for a day or two ~~but~~ nothing longer

Q. If it run through those breaks for two days how much of the Island would it cover?

A. It would depend something on the size of the break.

Q. Those that did occur?

A. I do not know that any did occur

Q. You do not know whether there has been any breaks there since 1870 up to 1878?

A. I think from 1871 — this is my impression from 1871 up to 1878 we had no overflow on this island

Q. Was there an overflow there in 1878 in which the island was wholly overflowed?

A. I think it occurred in January and if so it would be in 1879

Q. I call it the winter of 1878-9 was there a general overflow of the island then?

A. Well that break occurred in January I think 1878

2016

Q. My question was, was there a general overflow of the island during the winter of 1877-8 or of 1878-9 Either?

A. There was break occurred in 1878 which caused a general overflow

Q. What was the immediate cause of that break?

A. The water.

Q. What caused it, was there any imperfection in the levee? Was there not a place there where the levee had been cut down for a road and had been used for wagons?

A. No sir

Q. Through which the water first came in? A. No sir

Q. Was there no levee within your Knowledge broken in that way there, by the water coming through where an opening had been cut from the wagons to pass through?

A. No, not any that I know of

Q. None that you ever heard of?

2017

A. No sir, but I think I would have heard it if there had been. I made it my general business to make the repairs individually

Q. Now in 1877-8 during the flood waters, they went right over the top of the levee, did they not? A In 1877-8

Q. Yes. The water we have just spoken of.

A. No sir

Q. They did not? A No sir

Q. In your direct examination you said that the waters of 1877-8 went over the embankment, that is as I took it down. What did you mean by that if you said it?

Mr Cadwalader. He did not say anything of the kind

A. I do not understand any such proposition

Mr. Catlin What affect did that flood have upon these levees? A. It had the affect to break the levees in. It had the affect to break the

2018

break the levee there is on what is called the Weinman land in the bend of the river — where a strong current caused by the filling in of the opposite shore had cut and torn away the bank and the strength and force of the current broke away some of the levee. It struck it and it broke away and lifted bodily out some of it, I think about twenty feet at the start. It went over and tore away on the inside and then lifted bodily out about twenty feet and then it crumbled and it was carried gradually away

Mr. Cadwalader Was that at Horse Shoe Bend.?

A. Yes that is Horse Shoe Bend

Mr. Catlin. Was that the only place that was broken?

A. That was the only where it was broken by the Sacramento

Q. Was it broken from any other cause?

A. After the island was filled up from the Sacramento it had

2019

to find an outlet and the pressure against the whole general levee system was so great that the weaker points had to give way and what we call the San Joaquin shore and also on what we call our cross-levee, the pressure from the inside of the levee.?

Q. The pressure from the inside, out? A. Yes. The water in the Sacramento was much higher than in the San Joaquin

Q. The water of the Sacramento made the first breach through the levee? A. Yes

Q. and filled the island up full? A. Yes

Q. And after being filled the pressure of the water on the inside broke the levees on the San Joaquin side? A. Yes

Q. Did that break it extensively? A Quite Extensively, yes.

Q. Did it run over those levees and wash them away?

2020 A. I do not think it did to

any extent run over them.

Q. It pushed them out then by the pressure merely. Is that your idea?

A. Yes, it pushed them out

Q. When the Sacramento got high did not it flow right across Sherman Island and go right over the tops of all the levees?

A. No sir

Q. It did not? A. No sir

Q. Now what was the extent of the inhabitancy and cultivation of that island prior to 1862. You state that there were two or three shanties there. Was there any school house there prior to 1862? A. No sir

Q. When was that school house put there? A. In 1872 I think I say since 1872 we have had two school houses. We had one at a distance from there that was located three or four years before that

Q. What is the name of the town on Sherman Island?

A. Emmaton. We have a

2021

Post-Office there

Q. I wish you would mark out on the map that the Judge has the place where Emmaton is

Mr. Cadwalader Mr. Upham you laid that town out did you not? A. Yes.

(The witness here explained the position of Emmaton on the diagram)

Mr. Catlin. How high did the ordinary tides cover Sherman Island before the tides began to be reduced in volume. You say the tides are about five feet now and that they were a foot and a half higher prior to 1862, did you not?

A. No sir, I said that the average of the high water was about a foot and a half or two feet higher in 1862

Q. What was it you said about the tides?

A. I said we had an actual tide there of five feet. When I say five I mean generally five feet. Sometimes they went up as

2022

high as six.

Q. Up to what period did you have these tides?

A We have them always down there

Q. Do you have them now?

A Yes, we have them now

Q. I understood you have a five or a six foot tide. How much of the island would that tide flow in prior to 1862 or say up to 1867 after you came there, if there were no levees or nothing to obstruct it?

A. It used to run over the banks at high tide what we call the changes of the moon. In the full moon it ran over the banks of the Sacramento.

The Court. How deep did it cover the island?

A. Just perceptibly over the banks. There would be some places where the water would not come over it

Mr. Catlin. How deep would that make the water on the island generally when the water

2023 was up? A. The water

from the action of the tides, did not used to go back into the middle of the island

Q. Was the middle of the island higher than the banks?

A. It used to percolate through and the absorption and evaporation used to keep the inside portion of the island dry, so much so that in one or two or three years fires occurred there and burned off the soil for a foot and a half in depth

Q. Is the elevation of the soil higher or lower in the middle of the Island?

A. It gradually recedes from the banks.

Q. It gradually recedes from the shore? A. Yes.

Q. Then if the tides run over the banks would not they overflow the island?

A. They would if they were running on a smooth hard surface undoubtedly

Q. What kind of a surface was there, there?

2024

A. There were a great many little rivulets, sloughs like, which would be down very nearly to the low tides and perhaps a little lower on the bank of the river and this water would gather more or less in these sloughs and these branches, but we did not during the whole summer season of my acquaintance with Sherman Island — We never had the water back into the center of the Island that I know of from the tides. It used to be taken up and absorbed by the soil, what did not escape through these rivulets and it would be evaporated.

Q. Did these sloughs or rivulets as you call them cross the island or penetrate it to the center? A. No, they would run out for a short distance most of them five or six rods or eight or ten rods, of the character I speak of, Beavers Cuts some call them

2025 Q. Were there not many of

them that went still further into the Island?

A. We have what we call Maybury Slough there which is some Eight miles long

Q. Eight miles long on the island? A. Yes

Q. Is it a straight or a crooked Slough? A. It is serpentine. We have other sloughs too

Q. Has not a very large portion of this thirty-five dollars an acre been expended to repair the levees? A. There has been a great deal of it Expended in repairs

Q. The first assessment was five dollars an acre or less? A. No sir, I think it was $4.^{80}

Q. How much was the next one? A. 75 cents

Q. And the next? Just run them right through

A. I can not say?

Q. I am not particular?

A. I can not do it

Q. Have there been as many as seven or Eight different assessments?

2026

A. Yes, I think there have. I think there have been more than that. I think there are as many as three assessments that still stand on the books.

Q. Not collected? A. Yes.

Q. What is the highest assessment that was levied in any one year? A. $13.50.

Q. They run from 75 ct up to $13.50? A. Yes. Q. There have been eight or ten of them

Mr. Cadwalader. He did not say eight or ten

Mr. Cablin. How many did you state. Mr. Cadwalader objects to me stating eight or ten

A. I did not state how many there have been. I said there had been thirty five dollars "in toto"

Q. I asked you if there had been seven or eight and you said you thought more?

A. Yes, I think there have been more than seven or eight

2027 Q. Do you think there have

been as many as ten?

A. There have been three I think

Q. (Intg) Can not you answer generally whether you think there have been about ten or about nine?

A. Well a general answer might lead one very much astray. I think there have been as many as that, but then several of them have been rescinded

Q. You say you raised the largest crop in 1877. Is not that about the only general crop that has been raised there?

A. No sir, we have been raising barley for years right along

Q. There was a large crop in 1877? A. Yes.

Q. That must have been after this levee was built?

A. Yes, it was in 1877

Q. You state that your largest crop was in 1877?

A. Yes, that is previous to the flood

Q. Previous to which flood?

A The flood of 1878

2028

Q. Had there been any levees there before? A. Yes.

Q. Had there been any general system of levees? A. Yes.

Q. When that large crop was raised the whole island was leveed, was it not? A. Yes.

Q. By what were considered strong levees? A. Yes

Q. Then they did raise a crop there in 1877 - In the Summer of 1877. It was a wheat crop wasn't it, and barley?

A. It varied, it was a varied crop.

Q. Was it mainly wheat and barley? A. No sir it was not.

Q. Was it mainly wheat?

A. No sir, it was a varied crop. There was a very heavy yield of ~~potatoes~~

Q. When was the levee built that protected that crop?

A. That levee was built in 1870 I think or in 1871. I think it was in 1870 that is

2029 my impression or 1871

Q. When the levee you built in 1868-9 had been destroyed and you built another one in 1870 or 1871? A. No sir, the continual filling of the river and the raising of the general water level of the river had necessitated the building of additional embankments

Q. You merely raised the levee?

A. We had also to extend its breadth

Q. You extended it by raising it and making it broader?

A. Yes. That is when we put on that $11 3.50 assessment.

Mr. Cadwalader Mr. Upham when did you build that wharf there?

A. In 1871.

Q What kind of a wharf was that? A. It was a general landing of the Sacramento Boats plying between here and San Francisco

———— " ————

The Court here took a recess until Monday November 28th 1881 at 9.30 A.M.—

2030